

1 UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF OHIO  
3 EASTERN DIVISION

4 - - -

5 IN RE: NATIONAL :  
PRESCRIPTION : MDL No. 2804  
6 OPIATE LITIGATION :  
\_\_\_\_\_ : Case No.  
7 : 1:17-MD-2804  
THIS DOCUMENT RELATES :  
8 TO ALL CASES : Hon. Dan A. Polster

9 - - -

10 Wednesday, February 27, 2019  
11 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER  
CONFIDENTIALITY REVIEW

12 - - -

13  
14 Videotaped deposition of KIRK HARBAUER,  
held at the Hilton Garden Inn, Perrysburg, Ohio,  
15  
commencing at 9:02 a.m., on the above date, before  
16  
Carol A. Kirk, Registered Merit Reporter and Notary  
17  
Public.

18 - - -

19 - - -

20  
21 GOLKOW LITIGATION SERVICES  
877.370.3377 ph | 917.591.5672 fax  
22 deps@golkow.com  
23  
24

Page 2

1 APPEARANCES:  
2 On behalf of the Plaintiffs:  
3 MCHUGH FULLER LAW GROUP  
4 BY: LANCE REINS, ESQUIRE  
5 lance@mchughfuller.com  
6 ALLAN (A.J.) L. ELKINS, ESQUIRE  
7 allan@mchughfuller.com  
8 (via teleconference)  
9 97 Elias Whiddon Road  
10 Hattiesburg, Mississippi 39402  
11 601-261-2220  
12  
13 On behalf of AmerisourceBergen Corporation (via  
14 teleconference and text/video streaming):  
15 JACKSON KELLY PLLC  
16 BY: SANDRA K. ZERRUSEN, ESQUIRE  
17 skzerrusen@jacksonkelly.com  
18 50 South Main Street, Suite 201  
19 Akron, Ohio 44308  
20 330-252-9060  
21  
22 On behalf of HBC (via teleconference and text/video  
23 streaming):  
24 MARCUS & SHAPIRA LLP  
25 BY: ELLY HELLER-TOIG, ESQUIRE  
26 eltoig@marcus-shapira.com  
27 One Oxford Center, 35th Floor  
28 301 Grant Street  
29 Pittsburgh, Pennsylvania 15219-6401  
30 412-338-3345  
31  
32 On behalf of Walmart (via teleconference and  
33 text/video streaming):  
34 JONES DAY  
35 BY: PATRICIA OCHMAN, ESQUIRE  
36 pochman@jonesday.com  
37 901 Lakeside Avenue East  
38 Cleveland, Ohio 44114  
39 216-586-3939

Page 3

1 On behalf of Prescription Supply, Inc.  
2 FOX ROTHSCHILD LLP  
3 BY: JAMES C. CLARK, ESQUIRE  
4 jclark@foxrothschild.com  
5 STEPHAN A. CORNELL, ESQUIRE  
6 scornell@foxrothschild.com  
7 (via teleconference and text/video  
8 streaming)  
9 2700 Kelly Road, Suite 300  
10 Warrington, Pennsylvania 18976-3624  
11 215-345-7500  
12  
13 On behalf of Johnson & Johnson and  
14 Janssen Pharmaceuticals:  
15 TUCKER ELLIS LLP  
16 BY: JEFFREY M. WHITESELL, ESQUIRE  
17 jeffrey.whitesell@tuckerellis.com  
18 950 Main Avenue, Suite 1100  
19 Cleveland, Ohio 44113  
20 216-592-5000  
21  
22 On behalf of McKesson (via teleconference and  
23 text/video streaming):  
24 COVINGTON & BURLING LLP  
25 BY: MARY YANG, ESQUIRE  
26 myang@cov.com  
27 One CityCenter  
28 850 Tenth Street, NW  
29 Washington, DC 20001  
30 202-662-5110  
31  
32 On behalf of HBC:  
33 MARCUS & SHAPIRA LLP  
34 BY: MOIRA CAIN-MANNIX, ESQUIRE  
35 cain-mannix@marcus-shapira.com  
36 One Oxford Center, 35th Floor  
37 301 Grant Street  
38 Pittsburgh, Pennsylvania 15219-6401  
39 412-338-3345

Page 4

1 ALSO PRESENT:  
2 Michael Newell, Videographer  
3 Zachary Hone, Trial Technician  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

---

Page 5

1 VIDEOTAPED DEPOSITION OF KIRK HARBAUER  
2 INDEX TO EXHIBITS  
3 WITNESS PAGE  
4 KIRK HARBAUER  
5 CROSS-EXAMINATION BY MR. REINS 9  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

Page 6	
1	VIDEOTAPED DEPOSITION OF KIRK HARBAUER
2	INDEX TO INDEX
3	PSI - K. HARBAUER DESCRIPTION PAGE
4	PSI - K. Harbauer 1 Letter to Ms. Massey from 24
5	Mr. Harbauer, dated March
6	25, 1996, Bates-stamped
7	PSI-1012.5
8	PSI - K. Harbauer 2 Document titled 80
9	"Suspicious Order
10	Monitoring System, System
11	Documentation,
12	Introduction and Table of
13	Contents," Bates-stamped
14	PSI-72519 through 72530
15	PSI - K. Harbauer 3 Letter to Ms. Margreta 84
16	from Mr. Harbauer, dated
17	May 28, 1997, Bates-
18	stamped PSI-166566
19	PSI - K. Harbauer 4 Suspicious Order 111
20	Monitoring Report,
21	Bates-stamped PSI-158967
22	through 159013
23	PSI - K. Harbauer 5 Document titled 126
24	"Controlled Substances,"
	Bates-stamped PSI-0000653
	and 654
	PSI - K. Harbauer 6 Spreadsheet Bates-stamped 145
	PSI-1011.1 and 2
	PSI - K. Harbauer 7 Prescription Supply 155
	Maximum Monthly Units for
	OLS Systems, Bates-
	stamped PSI-0000274
	through 297

Page 7

1 - - -

2 P R O C E E D I N G S

3 - - -

4 THE VIDEOGRAPHER: We are now

5 on the record. My name is Michael

6 Newell. I'm the videographer for

7 Golkow Litigation Services.

8 Today's date is February 27th,

9 2019, and the time is 9:02 a.m.

10 This video deposition is being held

11 in Perrysburg, Ohio in the matter

12 of National Prescription Opiate

13 Litigation for the Northern

14 District of Ohio, Eastern Division.

15 The deponent today is Kirk

16 Harbauer.

17 Will counsel please identify

18 themselves.

19 MR. REINS: Lance Reins for

20 the Plaintiff.

21 MR. CLARK: Jim Clark of Fox

22 Rothschild for Prescription Supply.

23 MR. WHITESELL: Jeff

24 Whitesell from Tucker Ellis for

Page 8

1 Johnson & Johnson and Janssen.

2 THE COURT REPORTER: On the

3 phone?

4 MS. OCHMAN: Patricia Ochman,

5 Jones Day, for Walmart.

6 MS. ZERRUSEN: Sandy

7 Zerrusen, Jackson Kelly, for

8 AmerisourceBergen.

9 MR. CORNELL: Stephan

10 Cornell, Fox Rothschild, for

11 Prescription Supply.

12 MS. YANG: Mary Yang with

13 Covington on behalf of McKesson.

14 MR. ELKINS: A.J. Elkins,

15 McHugh Fuller Law Group, for the

16 Plaintiffs.

17 THE VIDEOGRAPHER: The court

18 reporter today is Carol Kirk and

19 will now swear in the witness.

20 - - -

21 KIRK HARBAUER

22 being by me first duly sworn, as hereinafter

23 certified, deposes and says as follows:

24 CROSS-EXAMINATION

Page 9

1 BY MR. REINS:

2 Q. Good morning.

3 A. Good morning.

4 Q. Can you please introduce yourself.

5 A. Yeah. My name is Kirk Harbauer.

6 Q. And, Mr. Harbauer, have you been

7 through a deposition before?

8 A. Never have.

9 Q. Okay. I'm sure your counsel has

10 probably advised you, but I'll just go over a

11 few basic ground rules for today's deposition,

12 okay?

13 A. Okay.

14 Q. All right. Clearly I'm going to

15 be asking you some questions here today.

16 Because we have a court reporter taking down

17 everything we say, I'm going to need you to

18 please verbalize all of your answers. No

19 "huh-uhs," "uh-huhs" or head nods because those

20 can't be taken down, okay?

21 A. Very good. I'll do the best I

22 can.

23 Q. Absolutely.

24 A. That's all I can do. I've never

<p style="text-align: right;">Page 10</p> <p>1 given a deposition, so ...</p> <p>2 Q. If you hear me say something like,</p> <p>3 "Is that a yes," "Is that a no," that's kind of</p> <p>4 a clue to you that you might have nodded your</p> <p>5 head, okay?</p> <p>6 A. Okay.</p> <p>7 Q. All right. For the very same</p> <p>8 reasons, if you could please let me finish my</p> <p>9 question before you begin your answer. If we</p> <p>10 talk over one another, it makes it very</p> <p>11 difficult for her to do her job, okay?</p> <p>12 A. Okay.</p> <p>13 Q. All right. And, lastly, if you</p> <p>14 answer my question, I'm going to assume you</p> <p>15 understood it and you're telling the truth; is</p> <p>16 that fair?</p> <p>17 A. Yes.</p> <p>18 Q. All right. Now, if you don't</p> <p>19 understand my question, let me know and I'll</p> <p>20 rephrase it. Or if you don't know something,</p> <p>21 you can simply let me know, okay?</p> <p>22 A. Okay.</p> <p>23 Q. Any questions before we get</p> <p>24 started?</p>	<p style="text-align: right;">Page 12</p> <p>1 A. No, I have not. This is --</p> <p>2 this -- I've worked there for over 40 years.</p> <p>3 Q. What does Prescription Supply,</p> <p>4 Inc. do?</p> <p>5 A. We supply pharmaceuticals to</p> <p>6 independent drugstores and some -- a little</p> <p>7 hospital business.</p> <p>8 Q. And you said you began there</p> <p>9 40 years ago; is that right?</p> <p>10 A. That's correct.</p> <p>11 Q. What was your first position?</p> <p>12 A. Well, I worked in receiving.</p> <p>13 Q. And what does that mean?</p> <p>14 A. Just receiving product in the back</p> <p>15 door through the warehouse, unloading trucks,</p> <p>16 putting away stock. It's a family organization,</p> <p>17 so I pretty well have worked almost -- a lot --</p> <p>18 a lot of the jobs all the way through the</p> <p>19 operation.</p> <p>20 Q. And the president is Mr. Thomas</p> <p>21 Schoen; is that right?</p> <p>22 A. Correct.</p> <p>23 Q. And what's your relationship with</p> <p>24 him?</p>
<p style="text-align: right;">Page 11</p> <p>1 A. No. I'm ready to go.</p> <p>2 Q. All right. Your counsel probably</p> <p>3 advised you as well, this is not meant to be</p> <p>4 a -- some form of torture, so if you've got to</p> <p>5 use the restroom or you need a drink or</p> <p>6 something, you just let us know, okay?</p> <p>7 A. Okay. Very good.</p> <p>8 Q. All right. Sir, are you currently</p> <p>9 employed?</p> <p>10 A. Yes, I am.</p> <p>11 Q. And who do you work for?</p> <p>12 A. Prescription Supply.</p> <p>13 Q. And what do you do for</p> <p>14 Prescription Supply?</p> <p>15 A. I'm the vice president of</p> <p>16 information systems. I wear a lot of hats, but</p> <p>17 that's the main thing I do.</p> <p>18 Q. How long have you held that</p> <p>19 position?</p> <p>20 A. Over 20 years.</p> <p>21 Q. Have you had the same position the</p> <p>22 entire time?</p> <p>23 MR. CLARK: Objection to</p> <p>24 form.</p>	<p style="text-align: right;">Page 13</p> <p>1 A. He is my uncle.</p> <p>2 Q. And is your mother also involved</p> <p>3 in the company?</p> <p>4 A. Yes, she is.</p> <p>5 Q. What's her position?</p> <p>6 A. She's the secretary/treasurer.</p> <p>7 Q. And what's her name?</p> <p>8 A. Jacquelyn Harbauer.</p> <p>9 Q. And you have a sister that's works</p> <p>10 for the company?</p> <p>11 A. Yes.</p> <p>12 Q. Who's that?</p> <p>13 A. Candace Harbauer.</p> <p>14 Q. And what does she do?</p> <p>15 A. She is the point DR -- or she's</p> <p>16 the -- she has a lot of regulatory stuff. I</p> <p>17 don't know what her exact title is, though.</p> <p>18 Q. Do you know what her duties and</p> <p>19 responsibilities as "regulatory stuff" means?</p> <p>20 MR. CLARK: Objection to</p> <p>21 form.</p> <p>22 A. Yes, I do.</p> <p>23 Q. Tell me, if you don't mind.</p> <p>24 A. Basically going through anything</p>

Page 14

1 that the company needs to do legalize --  
 2 legal-wise. Helps us go through all kinds of  
 3 audits and regulatory -- any kind of regulatory  
 4 affairs.

5 Q. And I believe you have several  
 6 cousins that work in the business?

7 A. Yes, I do.

8 Q. And who would that be?

9 A. All of my cousins?

10 Q. How many do you have working for  
 11 the company?

12 A. Well, there's probably five of us,  
 13 I think, or six of them.

14 Q. Okay. And who are they and what  
 15 do they do?

16 MR. CLARK: Objection to  
 17 form.

18 A. Well, Wendy Schoen, which is Tom's  
 19 daughter. Chris Schoen. Rob -- Chris Schoen is  
 20 a sales manager.

21 Q. What does Wendy do?

22 A. Warehouse employee. Rob Schoen,  
 23 he's the warehouse manager. Jim Schoen is the  
 24 controlled substance manager. And I think

Page 15

1 that's it.

2 Q. Okay. Obviously you've worn a lot  
 3 of different hats over the years.

4 A. That's correct.

5 Q. I don't want to --

6 MR. CLARK: Let him finish  
 7 his --

8 A. Oh, sorry.

9 Q. That's okay. Sometimes you'll  
 10 know exactly where I'm going.

11 Obviously you've worn a lot of  
 12 different hats over the years, 40-year  
 13 experience. You've been working -- or the head  
 14 of information services. How long have you held  
 15 that position?

16 MR. CLARK: Objection to  
 17 form.

18 A. I've been doing it for the last 20  
 19 at least.

20 Q. Okay. And you made it sound like  
 21 you wear a lot of hats even within that  
 22 position. What types of things are you  
 23 responsible for?

24 MR. CLARK: Objection; form.

Page 16

1 A. Well, I also am an EDI  
 2 coordinator. I do a lot of that with EDI, AS2,  
 3 web development, systems analysis, and really  
 4 I'm an RPG programmer is what I do. I'm a  
 5 maintenance programmer, and working on the IBM  
 6 environment.

7 Q. All right. That's maybe second  
 8 language to you, but I'm going to need some help  
 9 explaining some of those things.

10 Let's start with the EDI  
 11 coordinator. What does that mean?

12 A. I'm responsible for electronic  
 13 data interchange for all the documents that  
 14 trade hands between Prescription Supply and all  
 15 our vendors --

16 Q. Okay.

17 A. -- as well as some of our  
 18 customers. They -- you know, a normal document  
 19 basically can be converted into an EDI document.  
 20 There's numbers for them and there's  
 21 specifications for each one. You know, an  
 22 invoice, a purchase order, any of the documents,  
 23 you know, chargeback.

24 Q. What's a chargeback?

Page 17

1 A. A chargeback is -- Prescription  
 2 Supply may pay a price for an item, okay, with  
 3 the vendors, and with that chargeback being --  
 4 then there are certain group purchasing  
 5 organizations that can petition or work with the  
 6 vendors for special pricing. So they may be  
 7 able to buy a product below cost.

8 And a chargeback is one that goes  
 9 back to the manufacturer where the process of  
 10 where Prescription Supply would bill back to the  
 11 manufacturer for an item or a sale that we made.  
 12 If we paid a dollar for something, for example,  
 13 and they may have negotiated a price of  
 14 80 cents, a chargeback would be for the  
 15 difference of that.

16 Q. Is there a particular system that  
 17 you use?

18 A. We use Extol.

19 Q. How do you spell that?

20 A. E-x-t-o-l. It's a translator.

21 Now, you say "system." Are you talking about  
 22 the hardware, or are you talking about the  
 23 software?

24 Q. Hardware.

<p style="text-align: right;">Page 18</p> <p>1 A. Okay. Hardware is an IBM 2 System i. 3 Q. And when you say use this as a 4 communication tool with your vendors, with your 5 customers, how do you actually transfer 6 documentation? 7 MR. CLARK: Objection to 8 form. 9 A. Through various means. We use VAN 10 connection, which is a value-added network, 11 which works like a mailbox. We use AS2, which 12 is functionality that uses the Internet over 13 with PKI encryption where there's certificates 14 involved with each trading partner, and they 15 verify that the -- the thing goes across 16 encrypted, the document. 17 (Reporter clarification.) 18 A. Oh, the document goes across 19 encrypted. I'm sorry. I'm slow down. Just 20 nervous. I found something I can answer. 21 Q. Don't get excited. We're not 22 going to stay here long. 23 A. This is the life I live, okay, so 24 I work --</p>	<p style="text-align: right;">Page 20</p> <p>1 communicate between vendors -- 2 Q. Got it. 3 A. -- over the Internet. 4 Q. And do you actually maintain the 5 website? 6 A. Not always. We have other sources 7 that do that. 8 Q. Okay. Systems analyst? 9 A. Yeah, which I interpret that as 10 being -- taking care of day-to-day things, 11 functions that happen within Prescription 12 Supply. I've grown up with these -- these 13 applications, so we've -- you know, I make sure 14 that the orders are processing and we're, you 15 know, filling orders and -- you know, all the -- 16 all the -- any system that's on the AS400, I 17 kind of oversee to make sure that they run and 18 the tools are provided for the individuals that 19 need them. 20 Q. And is all the information backed 21 up? Do you have a -- 22 A. Yes, we do. 23 Q. Okay. 24 MR. CLARK: Note my</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. I feel like I'm in a Peanuts 2 cartoon right now. 3 A. No. No. I didn't mean to bring 4 it up if -- you know, unless you need me to. 5 Q. No. It's fine. You're answering 6 my question. 7 Moving along, though, AS -- you 8 said AS2 web developer, what does that mean? 9 MR. CLARK: Objection to 10 form. 11 A. I'm sorry. What's the question? 12 Q. You said another function that you 13 do -- I thought -- I wrote down AS2 web 14 development. Is that correct or no? 15 A. That's -- I don't believe I said 16 that. 17 Q. Okay. 18 A. Okay. So I said, I'm a web 19 developer. I work on web applications that 20 Prescription Supply may use with their 21 operations. 22 Q. Got it. 23 A. And I think what you said was AS2. 24 AS2 is our form of encryption that we use to</p>	<p style="text-align: right;">Page 21</p> <p>1 objection. Form. 2 Q. Do you have a retentions policy or 3 backup policies or anything like that? 4 A. Well -- 5 MR. CLARK: Objection to 6 form. 7 A. Okay. So, yes, there is -- we 8 normally keep two years worth of stuff. I have 9 sales history going back to 1997. 10 Q. Okay. 11 A. Some of the data may take -- you 12 know, there's a lot of volume. So some of the 13 stuff, as far as EDI documents that go out, I 14 can recreate them. You know, we don't save 15 those, you know, over 90 days or a year. 16 Q. I'm sorry. May be a dumb 17 question, but the sales history that you can go 18 back to 1997, through what program would that 19 be? 20 MR. CLARK: Objection to 21 form. 22 A. Through what program? Well, we 23 have -- the data is stored in a DB2 database. 24 Q. Okay.</p>



<p style="text-align: right;">Page 22</p> <p>1 A. And a DB2 database is the form of 2 physical files that reside on the IBM system 3 that we have. And so we can use any means of 4 software. We can use SQL. We can use -- we 5 have RPG, which is what I write in, to retrieve 6 that information. 7 Q. And would that include all the 8 detailed data involving the sales? 9 MR. CLARK: Objection to 10 form. 11 A. Yes, yes. 12 Q. All right. We went through a 13 number of your hats. Any that we haven't 14 discussed yet? 15 A. Well, that's the main ones. 16 Q. All right. Obviously one of the 17 things we're going to talk about here today is 18 you were responsible for complying with the 19 federal regulations regarding suspicious order 20 monitoring. 21 MR. CLARK: Objection to 22 form. 23 Q. Is that accurate? 24 MR. CLARK: Same objections.</p>	<p style="text-align: right;">Page 24</p> <p>1 we're going to look at is PSI-1012. It's going 2 to be page 5. 3 And for the record purposes, this 4 is going to be PSI-66568. 5 A. Okay. 6 (Discussion held off the record.) 7 --- 8 (PSI - K. Harbauer Exhibit 1 marked.) 9 --- 10 BY MR. REINS: 11 Q. All right. So we're now looking 12 at correspondence here. Can you see it okay? 13 A. Yes, I can. 14 Q. All right. And specifically this 15 is a letter on the letterhead of Prescription 16 Supply, Inc. I'm going to say PSI for short. 17 You're going to know what I mean, right? 18 A. Yes. 19 Q. Yes, sir. And then we've got this 20 is March 25th, 1996. And this is to Ms. Massey. 21 Do you -- this is someone that you would have 22 coordinated with at the DEA; is that right? 23 A. Correct. She was an agent at the 24 Cleveland office.</p>
<p style="text-align: right;">Page 23</p> <p>1 A. I'm responsible for the software 2 and the -- and giving the tools made available 3 to Jim Schoen so that we can comply, yes. 4 Q. Understood. And did you actually 5 develop that software? 6 A. I had -- I guess in all parts, no, 7 not all of the software, but I have a hand in a 8 lot of it. 9 Q. Okay. 10 A. I guess it really depends on -- 11 I'm sorry. Can I clarify? 12 Q. Yeah, of course. 13 A. When you say "develop," what do 14 you mean by develop the software? Do you mean 15 write it from scratch or -- I did not write it 16 from scratch, but I'm a maintenance programmer, 17 kind of, where I'll maintain the programs in the 18 event that there's a change that needs to be 19 made, or I worked with the DEA to streamline 20 some processes, I would work on those 21 modifications. 22 Q. Okay. Probably a good time to go 23 through the history of how you guys did things 24 for various time periods. So the first thing</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. Okay. So we'll kind of zero in on 2 that first paragraph. And of course you 3 authored this letter, correct? 4 MR. CLARK: Objection to 5 form. 6 A. Correct. 7 Q. "Previous to this time," it says, 8 "Prescription Supply, Inc.'s suspicious order 9 monitoring system has been a manual one." 10 Obviously this was written in 11 March of 1996. Can you elaborate what that 12 means? 13 MR. CLARK: Objection to 14 form. 15 A. A manual one, I guess, as -- I 16 was -- I was referring to the previous modes of 17 what we would do to monitor these suspicious 18 orders, which were reports ran in-house that we 19 would review looking at sales history. 20 We didn't have a "suspicious order 21 monitoring" system in-house. This was in '95, 22 so -- so I guess that's really what I meant by 23 that. I was trying to introduce -- well, that's 24 not the question, but I was trying to introduce</p>

Page 26

1 this new report that we had.  
 2 Q. And it looks like --  
 3 A. System.  
 4 Q. Yes, sir. It looks like -- we're  
 5 going to get to this. It looks like it was  
 6 really developed around this 1996 time frame; is  
 7 that right?  
 8 A. Yes.  
 9 MR. CLARK: Objection to  
 10 form.  
 11 Q. And so the question I have for  
 12 you, it looks like, obviously based on that and  
 13 what we're looking at, that there really wasn't  
 14 a system before 1996, right?  
 15 MR. CLARK: Objection; form.  
 16 A. I guess your term of "system" and  
 17 mine, I know that we were constantly aware of  
 18 our customers. There -- I mean, there was a  
 19 manual process, I guess, if I say manual, maybe  
 20 that was a poor choice of words. But they were  
 21 constantly reviewing customers, getting to know  
 22 their customers. They knew who they were  
 23 selling to. They were looking at sales on a  
 24 monthly basis. Whereas nothing formal going to

Page 27

1 the DEA, outside of ARCOS reporting.  
 2 Q. So let's break that down, if we  
 3 can.  
 4 A. Okay.  
 5 Q. Was there any type of -- and even  
 6 if it was handwritten, was there any type of  
 7 reporting, that you were aware of, that was  
 8 being compiled on a monthly or annual or  
 9 quarterly basis before your system was put in  
 10 place?  
 11 MR. CLARK: Objection to  
 12 form.  
 13 A. I believe there was -- yes, there  
 14 was. I mean, our ARCOS submission report would  
 15 be one of them. That was reviewed on a monthly  
 16 basis.  
 17 Q. Tell me what that is, the ARCOS  
 18 submission report.  
 19 A. When we would supply ARCOS data,  
 20 it would -- we would also have a submission  
 21 report where it would show all the ARCOS sales  
 22 or any controlled substance sales, for that  
 23 matter. I can remember a string of queries that  
 24 I would run that would do controlled substance

Page 28

1 and ARCOS items, which would be C-II's and  
 2 narcotics, basically. We would separate those.  
 3 I would break down -- I would run month end  
 4 reports basically and break sales down just to  
 5 recap them.  
 6 Q. Do you have access to these  
 7 reports, again, before this date?  
 8 A. No, I don't.  
 9 MR. CLARK: Objection to  
 10 form.  
 11 A. No, I don't.  
 12 Q. Is it your testimony here today  
 13 that you submitted those reports monthly to the  
 14 DEA?  
 15 MR. CLARK: Objection to  
 16 form.  
 17 A. We submitted the ARCOS data  
 18 monthly.  
 19 Q. And the ARCOS data, in what format  
 20 would you submit it?  
 21 A. I think -- this is going back to  
 22 floppy disk. In and five-and-a-half-inch floppy  
 23 disk, we would submit that. I can't tell you  
 24 the year exactly when as the evolution of the

Page 29

1 computer -- you know, we were taking orders back  
 2 on an XT IBM machine, a small XT personal  
 3 computer at one time. So ...  
 4 Q. So this manual process you're  
 5 talking about, you believe you would send a  
 6 floppy disk every month to the DEA?  
 7 A. Oh, yes, yeah.  
 8 MR. CLARK: Let him finish.  
 9 Q. Did you keep files or any records  
 10 or any backups or anything of those -- that  
 11 information?  
 12 MR. CLARK: Objection to  
 13 form.  
 14 A. No.  
 15 Q. Do you have any substantiating  
 16 evidence or proof that that was done on a  
 17 monthly basis?  
 18 MR. CLARK: Same objection.  
 19 A. We kept our DEA license. If I had  
 20 not been doing it on a monthly basis, they would  
 21 have pulled our license or we would have been  
 22 under indictment. We have not had any  
 23 infractions with the DEA.  
 24 Q. Well, you have been audited,



<p style="text-align: right;">Page 30</p> <p>1 right?</p> <p>2 A. Yes, sir.</p> <p>3 MR. CLARK: Objection to</p> <p>4 form.</p> <p>5 Q. And they have made corrections on</p> <p>6 how you guys report, correct?</p> <p>7 MR. CLARK: Same objection.</p> <p>8 A. Corrections how we report? Yes,</p> <p>9 we've modified that -- our reporting --</p> <p>10 Q. Based on what the DEA --</p> <p>11 A. -- over the years.</p> <p>12 Q. Sorry. Based on what the DEA</p> <p>13 suggested, correct?</p> <p>14 A. Yes.</p> <p>15 Q. I guess my question to you is, if</p> <p>16 I said, listen, before 1996, can you come</p> <p>17 forward with any evidence or any proof</p> <p>18 whatsoever, that you have, that you've</p> <p>19 maintained over the years, to show that you</p> <p>20 actually reported before that time period, the</p> <p>21 answer is you do not have anything, correct?</p> <p>22 MR. CLARK: Objection to</p> <p>23 form.</p> <p>24 A. If -- I guess no.</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Okay.</p> <p>2 A. I mean ...</p> <p>3 Q. Do you know what type of data</p> <p>4 specifically was being submitted, i.e. were</p> <p>5 there variances reported in the customer's</p> <p>6 ordering regarding frequency, amounts, things of</p> <p>7 that nature?</p> <p>8 MR. CLARK: Objection to</p> <p>9 form.</p> <p>10 Q. Let me rephrase. Do you know if</p> <p>11 any -- if it actually would identify suspicious</p> <p>12 orders, meaning orders of unusual size,</p> <p>13 deviating substantially from a normal pattern,</p> <p>14 or orders of unusual frequency, do you know if</p> <p>15 that was identified in those prior reports?</p> <p>16 MR. CLARK: Objection to</p> <p>17 form. I'm just going to note my</p> <p>18 objection on the record to the time</p> <p>19 period we're talking about here</p> <p>20 being outside the bounds of Special</p> <p>21 Master Cohen's rulings on what</p> <p>22 we're allowed to be asking about.</p> <p>23 MR. REINS: Okay.</p> <p>24 A. Okay. Can you restate the</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. Okay. Now, when did you start</p> <p>2 this floppy disk reporting? Do you know what</p> <p>3 year?</p> <p>4 A. Well, I --</p> <p>5 MR. CLARK: Objection to</p> <p>6 form.</p> <p>7 A. Floppy disk reporting, that was</p> <p>8 all -- when I first started working with the</p> <p>9 company, we were on a -- that was the way to</p> <p>10 transfer data at that time. So it was -- it was</p> <p>11 long before the process had been in play before</p> <p>12 I even came into my own working there,</p> <p>13 Prescription Supply. I can only answer for when</p> <p>14 I was there.</p> <p>15 Q. Fair enough. So would that have</p> <p>16 been through -- you believe it would have been</p> <p>17 throughout the '70s and '80s up until '96?</p> <p>18 MR. CLARK: Objection to</p> <p>19 form.</p> <p>20 A. Whenever the hardware permitted</p> <p>21 it, I believe it was, yes.</p> <p>22 Q. Is there a way we could find out</p> <p>23 when the hardware was permitted, date specific?</p> <p>24 A. I don't recall the dates.</p>	<p style="text-align: right;">Page 33</p> <p>1 question now so I get it right?</p> <p>2 Q. I just wanted to finish this line</p> <p>3 of inquiry as to what type of information would</p> <p>4 be inquired --</p> <p>5 A. Okay.</p> <p>6 Q. -- would be identified in the</p> <p>7 report.</p> <p>8 MR. CLARK: Same objection.</p> <p>9 A. What would be reported would be</p> <p>10 sales, okay? What submission -- any kind of</p> <p>11 sales that we submitted that went to the DEA.</p> <p>12 Any -- I'm sorry. Excuse me. I'm a little</p> <p>13 nervous here. Just our sales for controlled</p> <p>14 substances would be reported --</p> <p>15 Q. Okay.</p> <p>16 A. -- through ARCOS data.</p> <p>17 Q. Total sales?</p> <p>18 A. Yeah.</p> <p>19 Q. All right. So now getting back to</p> <p>20 this correspondence.</p> <p>21 A. Okay.</p> <p>22 Q. This will be Plaintiff's Exhibit</p> <p>23 Number 1. Next line says, "We have recently</p> <p>24 completed the necessary updates to transfer this</p>

<p style="text-align: right;">Page 34</p> <p>1 function to our computer system."</p> <p>2 Can you explain what was done?</p> <p>3 MR. CLARK: Objection to</p> <p>4 form.</p> <p>5 A. Well, at that time Prescription</p> <p>6 Supply was on a different piece of hardware.</p> <p>7 They were on a MAI Basic Four system. It was a</p> <p>8 different operating system, different hardware,</p> <p>9 and we had made a switch to the IBM platform,</p> <p>10 and I think it was an IBM System/38, which later</p> <p>11 migrated to an AS400.</p> <p>12 So at that time, we had gone on</p> <p>13 the new computer system and we were able to</p> <p>14 incorporate all of these new -- some -- we went</p> <p>15 with Online Solutions. So that was accounts</p> <p>16 payable, general ledger, inventory control. All</p> <p>17 the functionality that we would have, we were</p> <p>18 able to incorporate into all these -- all the</p> <p>19 business modules that -- for Prescription</p> <p>20 Supply.</p> <p>21 Suspicious order monitoring was</p> <p>22 one of those functions that we wanted to build</p> <p>23 into. So that's what we did.</p> <p>24 Q. And whose idea was it, if you</p>	<p style="text-align: right;">Page 36</p> <p>1 A. But I can't -- I can't say he</p> <p>2 developed -- I'm sorry.</p> <p>3 Q. No, you're fine.</p> <p>4 A. I'd love to finish. Yeah. I</p> <p>5 can't say he developed it. I mean, I don't</p> <p>6 know. His company did, okay?</p> <p>7 Q. Fair.</p> <p>8 A. Online Solutions.</p> <p>9 Q. I guess, though, the</p> <p>10 implementation of using the NWDA as the guide</p> <p>11 for the development of this reporting, whose</p> <p>12 idea was that, if you know?</p> <p>13 A. Well, we are -- we were members of</p> <p>14 the National Wholesale Drug Association, so that</p> <p>15 organization was really kind of an organization</p> <p>16 put together for best of practice within the</p> <p>17 industry.</p> <p>18 I believe Tom Schoen met Online</p> <p>19 Solutions at one of those meetings in regards to</p> <p>20 best practices. So that's what we tried to do,</p> <p>21 is produce best practices. And, you know, there</p> <p>22 was things that we needed to do as a company to</p> <p>23 grow. Electronic ordering. There was many</p> <p>24 functions, thing like that. I think mainly the</p>
<p style="text-align: right;">Page 35</p> <p>1 know?</p> <p>2 MR. CLARK: Objection to</p> <p>3 form.</p> <p>4 A. Well, I would say Tom Schoen would</p> <p>5 be the decision-maker at that time.</p> <p>6 Q. Next paragraph says, "Prescription</p> <p>7 Supply, Inc.'s suspicious ordering monitoring</p> <p>8 system (SOM) is designed to satisfy the Drug</p> <p>9 Enforcement Administration's requirements that</p> <p>10 the wholesalers monitor orders from their</p> <p>11 customers and forward a report to your office.</p> <p>12 This is patterned after the National Wholesale</p> <p>13 Drug Association (NWDA) SOM program."</p> <p>14 Did you actually develop this</p> <p>15 program?</p> <p>16 MR. CLARK: Objection; asked</p> <p>17 and answered.</p> <p>18 A. No. I installed it.</p> <p>19 Q. Who developed it, if you know?</p> <p>20 A. A gentleman probably named -- his</p> <p>21 name was Don Magdantz from Online Solutions.</p> <p>22 Q. Can you spell his last name?</p> <p>23 A. M-a-g-d-a-n-t-z.</p> <p>24 Q. Do you -- did you --</p>	<p style="text-align: right;">Page 37</p> <p>1 electronic ordering function we wanted to get</p> <p>2 installed. And that was one of his -- that was</p> <p>3 one of his options.</p> <p>4 So -- so that's how I think we --</p> <p>5 that's why I reference that, because that -- I</p> <p>6 think it was patterned after the guidelines put</p> <p>7 forth by the NWDA.</p> <p>8 Q. And I don't want to oversimplify</p> <p>9 this, but when I hear you speak to me, it sounds</p> <p>10 like a modernization of your company's computer</p> <p>11 systems across the board, right?</p> <p>12 MR. CLARK: Objection to</p> <p>13 form.</p> <p>14 A. Modernization. Yes, I guess we're</p> <p>15 keeping up with times, yes.</p> <p>16 Q. Yeah.</p> <p>17 A. If that's modernization, yes.</p> <p>18 Q. Well, and I did -- and the second</p> <p>19 part of that is, with purchasing, with</p> <p>20 receivables, with all of the functions of the</p> <p>21 business?</p> <p>22 A. Inventory control.</p> <p>23 MR. CLARK: Objection to</p> <p>24 form.</p>

<p style="text-align: right;">Page 38</p> <p>1 Give me a second to object          2 and then you can answer.          3 THE WITNESS: Sorry.          4 MR. CLARK: I know it's          5 tough. You're doing fine.          6 Objection to form.          7 Go ahead.          8 A. I kind of forgot the question.          9 Q. That's okay. So -- and that's          10 probably something I should probably add to          11 my -- so your counsel has the opportunity to          12 object to the form of my question. It's a legal          13 objection preserving it for a date and time to          14 deal with the Judge later, potentially. It is          15 not meant to distract you or inhibit the          16 deposition process.          17 A. Am I allowed to answer if he          18 objects then?          19 Q. You are.          20 MR. CLARK: Unless I tell          21 you -- instruct you not to answer.          22 A. Okay.          23 Q. Without question, you're allowed          24 to answer unless you're told specifically not</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Okay. Prescription Supply          2 originally was on another computer system. It          3 wasn't that they were manual processes. They          4 were -- it was a fully functioning computer          5 system. I believe what it was, we were on Basic          6 Four. Now, I spent ten years writing code in          7 Business Basic, okay?          8 I went to -- I took a lot of          9 classes on business basic and I wrote -- at that          10 time there wasn't a lot of manufacturers or          11 software writers producing software for a drug          12 wholesaler in the industry, okay? And so we had          13 made a choice to go with Basic Four because of          14 the fact that we could build basic languages and          15 we could do what we needed to get done and          16 actually write code for it.          17 So Prescription Supply purchased          18 this. There was a -- and I believe it was a --          19 it was another package that was man -- it was a          20 manufacturing package that was -- that was          21 adapted to use as a drug wholesaler, okay? It          22 fit the bill most of the way. As with any          23 software, it may fit 80 percent of what you need          24 to get done. The other 20 percent you -- you</p>
<p style="text-align: right;">Page 39</p> <p>1 to.          2 A. Okay.          3 Q. But because there are some -- a          4 frequency to the objections, maybe just wait a          5 moment, let him object, and then -- and then          6 answer.          7 A. Okay.          8 Q. Make sense?          9 A. Yes. Thank you.          10 Q. Okay. And let me rephrase the          11 question.          12 We're talking about this updating          13 of the system around 1996. I say "update." It          14 really is the development of the computerization          15 of the -- all of the job functions, frankly, of          16 PSI, right?          17 MR. CLARK: Objection to          18 form.          19 Q. Let me do this: I have you here,          20 so you can say it better. Tell me exactly what          21 was -- this computer systems that you were          22 implementing, what was the goal and the purpose?          23 MR. CLARK: Objection to          24 form.</p>	<p style="text-align: right;">Page 41</p> <p>1 have to either modify or make it your own.          2 So we felt that we -- it was to          3 our advantage at that time to move down the line          4 and to move into an IBM environment, being with          5 what software was available. Some of the          6 limitations on the system that -- it's not that          7 system was bad. We were still able to query and          8 run -- I ran Basic Four programs.          9 This is going back to '97 and this          10 is a lot of code. I don't recollect every          11 program I wrote. I will tell you that I've -- I          12 wrote several programs that recap -- that's all          13 I did was -- there's not a lot to do in -- we          14 had a lot of sales up, basically, and we had          15 devised, you know -- and whatever, but not a lot          16 to do there -- well, strike that. I just don't          17 want to say I -- not a lot to do, but it's --          18 it's pretty boring. It's not moving pixels          19 across the screen. It's really just tabulating          20 sales and keeping inventory.          21 But getting back to what I said,          22 so we went on from the Basic Four and we evolved          23 and went into the System i or the AS400 -- might          24 have been System/38 at that time and went to an</p>

Page 42

1 AS400, in which case we started, you know, to  
2 adapt these new software modules. And we still  
3 had the ability to have the source code where we  
4 could tweak it to make our systems run to meet  
5 our needs.

6 And I'm not sure if that's the  
7 question you asked exactly, but if you could go  
8 back on it, I'll try to fill you in the best I  
9 can.

10 Q. No. That was great.

11 A. Okay.

12 Q. What did the new system -- I guess  
13 the driving force, what was the driving force of  
14 wanting the new system?

15 MR. CLARK: Objection to  
16 form.

17 A. I think I pretty well answered  
18 that. Just to keep the system current and --  
19 and try to fill the needs that were put forth in  
20 front of us in Prescription Supply.

21 Q. Did the new system allow you to do  
22 things with suspicious order monitoring  
23 requirements pursuant to federal law that you  
24 couldn't do before?

Page 43

1 MR. CLARK: Objection to  
2 form.

3 A. I wouldn't say no, that we  
4 couldn't do before. We were doing them. I  
5 think it just made it easier to do.

6 Q. Okay. Now, I guess this one  
7 line -- because I don't want to oversimplify.

8 A. Right.

9 Q. You're really the IT  
10 informations --

11 A. This is --

12 MR. CLARK: Hold on. Let  
13 him --

14 THE WITNESS: Oh, I'm sorry.

15 MR. CLARK: I know it's a  
16 little bit unnatural, but let  
17 him --

18 THE WITNESS: I know. I'm  
19 sorry.

20 MR. CLARK: You're doing  
21 fine.

22 THE WITNESS: I'm doing the  
23 best I can. I am, honest.  
24

Page 44

1 BY MR. REINS:

2 Q. I guess the line that I want to  
3 talk about is, "This is patterned after the  
4 National Wholesale Drug Association SOM  
5 program."

6 I'm guessing, from learning about  
7 you and your job, that that was not the call  
8 that you made; am I right --

9 MR. CLARK: Objection to  
10 form.

11 Q. -- to pattern this reporting after  
12 the -- specifically the NWDA SOM program?

13 MR. CLARK: Same objection.

14 Q. SOM, yeah.

15 A. Well, I'm -- I guess this is --  
16 there's a lot of emphasis being put on this  
17 letter. This was something -- this letter was,  
18 in pretext, was really just an introduction to  
19 Prescription Supply producing a report that we  
20 needed to submit on a monthly basis to stake --  
21 you know, to be in compliance, all right.

22 This probably was a replacement of  
23 other reports that went out. I can't say what  
24 exactly. My memory doesn't true me what we did

Page 45

1 before that. This program used the DEA's  
2 base -- I guess you're not asking me about this  
3 program, but the suspicious order monitoring  
4 program basically used the DEA's drug code file,  
5 ARCOS file, and would break that -- those  
6 sales -- basically it allowed us to tabulate  
7 orders by base ingredients, and then we could  
8 pull a variance report and produce this report.

9 And that's what this letter was  
10 all about, just introducing it to Genora Massey,  
11 which was who our agent was, and this was  
12 something that I had in my notes that it got  
13 pulled anyway. Okay.

14 Q. All right. I guess what I'm  
15 saying is, did you come up with the formula --

16 MR. CLARK: Objection to  
17 form.

18 Q. -- for what should be reported?

19 MR. CLARK: Same objection.

20 A. No.

21 Q. Who did?

22 A. Who came up with the formula on  
23 what should be reported? This was the software,  
24 the -- I don't know. I couldn't tell you.

Page 46

1 Q. Okay. That's fair. All right.  
2 If we can step out of there.  
3 MR. CLARK: Are you done with  
4 that?  
5 MR. REINS: Yeah, I think so.  
6 MR. CLARK: Did you mark it?  
7 MR. REINS: I marked it as 1.  
8 MR. CLARK: Okay.  
9 MR. REINS: So I need to --  
10 yeah. Can I grab that? Thanks.  
11 A. You know, I'd like to say, I  
12 couldn't tell you who came up with the formula.  
13 Rethinking that, the DEA came up with the  
14 formula, right. The HDA -- or the DEA came up  
15 with this formula, right?  
16 Q. Well, let me ask you. Do you  
17 believe that DEA had a specific formula which  
18 mandated the reporting of suspicious orders  
19 monitoring back in 1996 or thereafter?  
20 A. A specific --  
21 MR. CLARK: Objection to  
22 form.  
23 A. A specific formula, no. I'd say  
24 guidelines. They produced guidelines. That's

Page 47

1 all they did, was produce guidelines. And we  
2 have to try to adhere to those guidelines the  
3 best the law says.  
4 Q. And I guess -- but I had asked you  
5 about the formula. You're not suggesting that  
6 the DEA gave you a formula back then, did they?  
7 A. No, I guess not.  
8 Q. So -- yeah. So my question was,  
9 was who within the company came up with the  
10 formula, which we will be talking about in a  
11 moment, which might be a better time. Maybe  
12 that will jog your memory. Let's do it now,  
13 actually.  
14 So we have been produced some  
15 information. And this is going to be PSI-1013.  
16 For record purposes, it's going to  
17 be produced as PSI-72519 through 72530.  
18 MR. CLARK: Lance, do you  
19 have a copy of that for me?  
20 MR. REINS: I do, actually.  
21 MR. CLARK: Thank you.  
22 MR. REINS: You're welcome.  
23 Actually, before we get to  
24 that, can you pull up PSI-1008.

Page 48

1 BY MR. REINS:  
2 Q. We're going to look for a moment  
3 now at -- there's what's called discovery  
4 responses. That's where the company has  
5 provided some discovery responses to questions  
6 that we had posed regarding these types of  
7 issues, reporting specifically.  
8 A. Okay.  
9 Q. And this is going to be  
10 Prescription Supply, Inc.'s Second Amended  
11 Objections and Responses to Plaintiffs' First  
12 Combined Discovery Request. If we can look at  
13 page 2. And if we can look in the second  
14 paragraph kind of midway through.  
15 And there's kind of some  
16 historical regarding prior responses, but really  
17 what I want to focus on, it says, "PSI states  
18 that in January 1996 PSI introduced its  
19 suspicious order monitoring system 'designed to  
20 satisfy the DEA's requirements that wholesalers  
21 monitor orders from their customers and send  
22 reports of suspicious orders to the DEA.'  
23 "This system utilized the DEA's  
24 ARCOS NDC file, which contained item's base

Page 49

1 ingredients and gram weight. PSI would print an  
2 SOM variance report showing all customers whose  
3 average monthly usage of base ingredients  
4 exceeded the average monthly usage multiplied by  
5 the variance factor for all customers in the  
6 same customer class. A copy of this report was  
7 submitted to the DEA monthly."  
8 As you can see, there are what's  
9 called Bates numbers on the bottom there, which  
10 are the documents we are about to look at.  
11 That's how we got here, okay?  
12 A. Okay.  
13 Q. All right.  
14 A. True statement.  
15 Q. That was going to be my first  
16 question. Do you stand by everything that's put  
17 in that response as being accurate?  
18 A. Yes.  
19 Q. Okay. Yes?  
20 A. Yes.  
21 Q. Okay. Anything you'd like to  
22 change, edit or modify?  
23 A. No.  
24 Q. Okay. Your answer lacks



<p style="text-align: right;">Page 50</p> <p>1 confidence.</p> <p>2 MR. CLARK: Objection; form.</p> <p>3 Objection; argumentative.</p> <p>4 MR. REINS: I'll withdraw.</p> <p>5 A. Well, it's just some of the terms.</p> <p>6 I mean, when you say "DEA requirements," it's</p> <p>7 really their guidelines.</p> <p>8 Q. Sure. Is there a difference, sir,</p> <p>9 in your mind, between requirements and</p> <p>10 guidelines?</p> <p>11 MR. CLARK: Objection to</p> <p>12 form.</p> <p>13 A. Well, the requirement is really,</p> <p>14 this is what must be done, and a guideline is</p> <p>15 what should be done also. It's -- I guess</p> <p>16 there's a difference, I would say, but still</p> <p>17 general form to be followed.</p> <p>18 Q. You understood at this point in</p> <p>19 time -- or did you understand that it was the</p> <p>20 federal law which required this mandatory</p> <p>21 reporting; that it was not a suggestion, it was</p> <p>22 the law?</p> <p>23 MR. CLARK: Objection to</p> <p>24 form. Calls for a legal</p>	<p style="text-align: right;">Page 52</p> <p>1 MR. REINS: Yeah. I think I</p> <p>2 started with "did you know."</p> <p>3 A. Yes.</p> <p>4 Q. All right. Now, I'm going to show</p> <p>5 you or direct you, if you don't mind, to -- you</p> <p>6 see the numbers on the bottom right-hand side of</p> <p>7 the document in front of you?</p> <p>8 A. Yes.</p> <p>9 Q. If you could go to 72529, which is</p> <p>10 going to be 11th page for our purposes.</p> <p>11 All right. This is called the</p> <p>12 "Suspicious Order Monitoring System Operator</p> <p>13 Instructions Introduction."</p> <p>14 A couple questions. One, before</p> <p>15 1996, was there a policy and procedure, or more</p> <p>16 importantly, I guess I should say, instructions</p> <p>17 on how to report to comply with the federal</p> <p>18 regulations?</p> <p>19 MR. CLARK: Objection to</p> <p>20 form.</p> <p>21 Q. If you know.</p> <p>22 A. Before when?</p> <p>23 Q. Before this time period that we're</p> <p>24 speaking about when you switched over to the</p>
<p style="text-align: right;">Page 51</p> <p>1 conclusion.</p> <p>2 Q. Would you agree with that?</p> <p>3 MR. CLARK: Objection to</p> <p>4 form.</p> <p>5 A. Yes. If that was the law, we</p> <p>6 followed it.</p> <p>7 Q. Did you know that was the law</p> <p>8 before I just said that?</p> <p>9 MR. CLARK: Objection to</p> <p>10 form.</p> <p>11 A. Yes.</p> <p>12 Q. I'm not the first one to tell you</p> <p>13 that, right?</p> <p>14 A. Right.</p> <p>15 MR. CLARK: Same objection.</p> <p>16 Q. In fact, specifically under the</p> <p>17 Code of Federal Regulations, did you know that</p> <p>18 suspicious orders, including orders of unusual</p> <p>19 size, orders deviating substantially from a</p> <p>20 normal pattern, and orders of unusual frequency</p> <p>21 should be reported since 1971?</p> <p>22 MR. CLARK: Objection to</p> <p>23 form.</p> <p>24 Is that a question?</p>	<p style="text-align: right;">Page 53</p> <p>1 computerized reporting.</p> <p>2 A. I know --</p> <p>3 MR. CLARK: Same objection.</p> <p>4 A. I'm sure there was, but maybe I</p> <p>5 did not personally know it in '91 when I started</p> <p>6 or working on the system, I didn't know it. I'm</p> <p>7 sure there was, though. You're asking me</p> <p>8 something that I can't really answer at this</p> <p>9 point in time.</p> <p>10 Q. So just to be clear, if you don't</p> <p>11 know something or you don't recall, you can</p> <p>12 simply tell me. But I --</p> <p>13 A. Okay. I don't recall.</p> <p>14 Q. Fair enough. But you pointed out</p> <p>15 something that I do think is worth mentioning.</p> <p>16 This instruction is dated 3/26/91.</p> <p>17 A. Right.</p> <p>18 MR. CLARK: Objection to</p> <p>19 form.</p> <p>20 Q. The discovery responses that we</p> <p>21 just went through said that this was implemented</p> <p>22 in January --</p> <p>23 A. '95. I'm sorry.</p> <p>24 Q. That's okay. It takes a little</p>

Page 54

1 getting used to.

2 It says it was implemented in  
3 January of 1996. Based on your inability to  
4 recall, can you testify here today, under oath,  
5 that this policy and procedure or this  
6 instruction was in place before 1996, as the  
7 response suggests?

8 MR. CLARK: Objection to  
9 form.

10 A. In my power of recall, I believe  
11 it was. It may not have used this particular  
12 system, but there were policies in play.  
13 Suspicious orders were reported. I mean, it may  
14 have been a telephone call. It may have been to  
15 the DEA. It could have been -- there could be  
16 other methods.

17 Q. So the "could have" and "I thinks"  
18 are what makes me have to follow up. Before you  
19 testified, the best of your ability you could  
20 recall, you would send total sales information  
21 pursuant to the ARCOS database on a floppy disk,  
22 as best you could recall.

23 Now you're saying you remember  
24 people making phone calls. Do you remember ever

Page 55

1 making a phone call to anybody with the DEA  
2 reporting a suspicious order?

3 MR. CLARK: Objection to  
4 form. Objection; argumentative.  
5 And I just want to note a standing  
6 objection to the time period of  
7 anything that predates 1996 as it  
8 relates to suspicious order  
9 monitoring and the areas and time  
10 period that Special Master Cohen  
11 has allowed us to ask questions  
12 about.

13 With that, you can answer.

14 A. Okay. Ask that question again.

15 Q. Did you ever make a phone call  
16 before January of 1996 to report a suspicious  
17 order?

18 A. I did not. That was not my  
19 responsibility. As far as in my text, I was --  
20 I'm a data guy. I'm a computer programmer is  
21 what I did.

22 Q. Just so you --

23 A. I was not the control manager.

24 Q. I understand. And I only ask you

Page 56

1 that because you had volunteered that  
2 information. So did you ever hear anybody make  
3 a phone call before 1996?

4 MR. CLARK: Objection to  
5 form.

6 A. I believe there were calls made,  
7 yes. The specifics I can't answer to.

8 Q. Sitting here today, do you recall  
9 anyone specifically making a phone call before  
10 1996 reporting a suspicious order?

11 A. To the DEA, yes.

12 Q. Who?

13 A. Yes. Tom Schoen.

14 Q. Okay. You recall here today,  
15 under oath, Mr. Schoen making a phone call to  
16 the DEA before 1996?

17 MR. CLARK: Objection; asked  
18 and answered. Objection;  
19 argumentative.

20 Q. You recall that, is what I'm  
21 asking.

22 A. I believe yes. Yes.

23 Q. Okay. So was that the method,  
24 then, phone calls, before 1996?

Page 57

1 MR. CLARK: Objection to  
2 form.

3 A. Before 1996, the DEA agents  
4 themselves would come in. There could be -- it  
5 could have been a method there. As far as him  
6 reporting, I know that there was reports made.

7 Q. All right. Let's go -- let's just  
8 move forward, because really all I'm trying to  
9 establish is the pattern and how things changed  
10 in the reporting process for PSI over the years.  
11 Really I'm not trying to get into specific  
12 information, but let me finish my question.

13 So from this point forward, there  
14 was a system that was established, correct?

15 A. Yes.

16 Q. All right. Now, if you could look  
17 through this document and basically -- so  
18 this -- this particular instruction that we're  
19 looking at, it says -- do you know where this  
20 came from?

21 A. This is the system documentation  
22 from Online Solutions. This basically talks  
23 about as far as the software itself.

24 Was there a question?

<p style="text-align: right;">Page 58</p> <p>1 Q. Yeah, I think you just answered  2 it.  3 A. Oh.  4 Q. So you did not come up with this?  5 A. No.  6 Q. All right. So it says, "The  7 Suspicious Order Monitoring System has the  8 following functions: One, "Prints the SOM  9 Variance Report, which shows all customers whose  10 average monthly usage or current monthly usage  11 of a base ingredient exceeds the average monthly  12 usage times a variance factor for all customers  13 in the same customer class."  14 Do you know what that variance  15 factor was?  16 A. The variance factor, I believe,  17 was, as far as strength of some of the products  18 where there could be -- some products would be  19 valued with a different higher factor than  20 others, as far as their base ingredient.  21 Q. So is there -- do you know what  22 variance factor would associate with which base  23 ingredient, or would that be written down  24 somewhere?</p>	<p style="text-align: right;">Page 60</p> <p>1 Would there be something or someone that could  2 tell us that?  3 MR. CLARK: Objection to  4 form.  5 Q. And if you know.  6 A. Not on this system from '91.  7 Q. Well, this is '96, right?  8 A. '96.  9 Q. Is that your answer?  10 A. The question is?  11 Q. Yeah. Is there a way to find out  12 how to determine the variance factor?  13 A. Not at this time.  14 Q. All right. And if you look at the  15 next page -- well, actually, let's go back. I'm  16 sorry. The second bullet point says --  17 MR. CLARK: Still on --  18 MR. REINS: Still on 72529.  19 MR. CLARK: All right.  20 A. We're still on 29?  21 Q. Yeah. We'll do the last line in  22 that first bullet point there. It says, "One  23 copy of this report is sent to the DEA at the  24 end of each reporting period, i.e., monthly.</p>
<p style="text-align: right;">Page 59</p> <p>1 MR. CLARK: Objection to  2 form.  3 A. I really wouldn't know right now.  4 I don't remember.  5 Q. Do you --  6 A. Not that -- what base  7 ingredient -- I guess what's the question again?  8 You're asking me about the base ingredient?  9 Q. I said what would the variance  10 factor set -- what would the variance factor be,  11 and I thought you said it depends on the base  12 ingredient?  13 A. Well, not the base ingredient.  14 Maybe it's the strength of the base ingredient.  15 Maybe it's something that is --  16 MR. CLARK: Go ahead.  17 A. -- twice as powerful or twice  18 as -- as far as the strength being unusually  19 high on a product as opposed to -- so it may be  20 a 1 and 1.5.  21 Q. Is there a way we can answer that  22 question specifically, meaning how the variance  23 factor was decided based on what strength and/or  24 base ingredient? Would there be a policy?</p>	<p style="text-align: right;">Page 61</p> <p>1 Another copy is saved for 24 months."  2 So when it says the DEA would get  3 a copy of the report, that would be after --  4 that would be at the end of the month, correct?  5 A. Yes. That would be after the sale  6 is made.  7 Q. Meaning after they were shipped?  8 A. Yes.  9 Q. Okay. Are you aware if in this  10 time period there was any system in place during  11 this time period where suspicious orders would  12 not be shipped?  13 MR. CLARK: Objection to  14 form.  15 Q. If you recall and can testify here  16 today under oath.  17 MR. CLARK: Same objection.  18 A. Say that again. Can you rephrase  19 that or ...  20 Q. Sure. Are you aware if during  21 this period of time -- this was implemented,  22 according to the discovery responses, January of  23 1996, correct?  24 A. Yes.</p>

Page 62

1 Q. Okay. Are you aware of any  
2 policies and procedures and/or instructions  
3 regarding not shipping or stopping shipments of  
4 suspicious orders?

5 MR. CLARK: Objection to  
6 form.

7 A. Yes, I am aware of orders that  
8 were not shipped.

9 Q. Different question.

10 A. Oh.

11 Q. I'm saying, was there a policy,  
12 was there a procedure, was there instruction on  
13 when not to ship an order based on it being  
14 quote/unquote suspicious --

15 MR. CLARK: Objection to  
16 form.

17 Q. -- in this time frame?

18 MR. CLARK: Objection to  
19 form.

20 A. That's beyond the scope of my  
21 interaction with this program. I basically ran  
22 the reports, made the tools available to the  
23 controlled substance officers so they could  
24 do -- well, controlled substance officer being

Page 63

1 Tom Schoen at that time. This is back in '95,  
2 so ...

3 Q. Great point. And let's go ahead  
4 and round that circle now to get it out of the  
5 way.

6 A. Great.

7 Q. You were responsible for compiling  
8 the information, reporting the data, pursuant to  
9 the program, but you were not personally  
10 involved in the stopping of any shipments,  
11 correct?

12 MR. CLARK: Objection to  
13 form.

14 A. Correct.

15 Q. At that point in time --

16 A. Correct. Sorry.

17 Q. That's okay.

18 At that point in time, it was  
19 Thomas Schoen, correct?

20 MR. CLARK: Objection to  
21 form.

22 A. Yes.

23 Q. And later it became Jim Schoen,  
24 correct?

Page 64

1 MR. CLARK: Same objection.

2 A. Yes, yes.

3 Q. Do you know when that was, when it  
4 changed?

5 A. I can't recall.

6 Q. Furthermore, you were not  
7 responsible in setting the thresholds for  
8 certain customers; is that correct?

9 MR. CLARK: Objection to  
10 form.

11 A. Correct.

12 Q. Initially, that was Thomas Schoen,  
13 correct?

14 MR. CLARK: Same objection.

15 A. Yes.

16 Q. And then became Jim Schoen,  
17 correct?

18 MR. CLARK: Same objection.

19 A. Yes.

20 Q. You were not responsible for the  
21 development of any policies and procedures  
22 regarding the stopping of shipments or setting  
23 thresholds, correct?

24 A. Yes.

Page 65

1 Q. To be clear, when we leave each  
2 other here today you were responsible for the  
3 reporting of information; however, the  
4 decision-making on what to do with that  
5 information specifically was in the hands of  
6 others?

7 MR. CLARK: Objection to  
8 form.

9 A. Yes.

10 Q. Including when to change the  
11 policies and procedures or the way in which PSI  
12 was reporting the information, correct?

13 MR. CLARK: Objection to  
14 form.

15 Q. Let me rephrase the question. I  
16 know the answer. It's okay.

17 All right. So if we look at this  
18 report, if you go on -- and what I want you to  
19 do is just take a moment, because what it looks  
20 like is like the first group of pages is really  
21 regarding the process of this reporting. And I  
22 believe -- like if we look at the first page.  
23 Let's do that. 72519. You've got an  
24 introduction. You've got kind of this different

<p style="text-align: right;">Page 66</p> <p>1 categories here.</p> <p>2 In the top left we've got Online</p> <p>3 Solutions, Inc. From speaking with you now, it</p> <p>4 looks like it's a company that you consulted</p> <p>5 with that helped you implement this system; fair</p> <p>6 to say?</p> <p>7 MR. CLARK: Objection to</p> <p>8 form.</p> <p>9 A. Yes. And I will also testify too</p> <p>10 that I see some notes here that -- we had</p> <p>11 another programmer that worked for Prescription</p> <p>12 Supply prior to me, okay? And I see his notes</p> <p>13 here. So he was probably the one that did the</p> <p>14 installation of this.</p> <p>15 Q. Got it.</p> <p>16 A. Okay.</p> <p>17 Q. And for record purposes, the</p> <p>18 second page is 72520. There are handwritten</p> <p>19 notes on the left-hand margin under "List of</p> <p>20 Programs," and there are circles. And you</p> <p>21 believe that was a programmer other than</p> <p>22 yourself?</p> <p>23 A. I'm sorry. Which one was that?</p> <p>24 MR. CLARK: Second page of</p>	<p style="text-align: right;">Page 68</p> <p>1 maintenance. This is the operator instruction.</p> <p>2 Basically gives an equation regarding the base</p> <p>3 ingredient. It's a formula.</p> <p>4 Do you have any personal knowledge</p> <p>5 about what this means?</p> <p>6 MR. CLARK: Objection to</p> <p>7 form.</p> <p>8 A. Okay. What this is, it's not a</p> <p>9 formula. It's basically a screenshot of a</p> <p>10 maintenance program that would basically take</p> <p>11 the base code of the product and the product</p> <p>12 name. The data that was populated in this file</p> <p>13 came from the DEA ARCOS file. So that would</p> <p>14 come in directly into the -- we would take it</p> <p>15 on -- I remember it was on reel-to-reel tape at</p> <p>16 the time when I would get it. It was an 8-inch</p> <p>17 reel-to-reel tape, and I would play a role of</p> <p>18 loading that file.</p> <p>19 Q. Okay.</p> <p>20 A. And that would populate. And this</p> <p>21 was just one of the screens for the program that</p> <p>22 would allow you to maintain -- say the</p> <p>23 ingredient name was -- had to be modified or of</p> <p>24 some sort, whether it was active or inactive.</p>
<p style="text-align: right;">Page 67</p> <p>1 the document.</p> <p>2 THE WITNESS: Okay.</p> <p>3 A. I can tell you my handwriting.</p> <p>4 Yeah, that's -- I'm sure that's probably Jim</p> <p>5 Bishop's, our other prior programmer.</p> <p>6 Q. So I guess that leads me to, were</p> <p>7 you actually involved in the installation of</p> <p>8 this program, if you recall?</p> <p>9 MR. CLARK: Objection to</p> <p>10 form.</p> <p>11 A. I was more of an operational -- in</p> <p>12 fact, on this program, I was involved as this</p> <p>13 program was progressed, as it moved forward, as</p> <p>14 it was modified to streamline for the DEA.</p> <p>15 Q. Okay. So if we go forward now, so</p> <p>16 if we go to 72530, which is page 12 of the</p> <p>17 document, there's like a formula there. And I</p> <p>18 will quickly let you get out of this area if</p> <p>19 this is --</p> <p>20 A. 72530 it looks like.</p> <p>21 Q. Yeah.</p> <p>22 A. Okay.</p> <p>23 Q. Yeah. So what we're looking at</p> <p>24 here is called the base ingredient file</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Okay.</p> <p>2 MR. CLARK: Lance, we've been</p> <p>3 going for about an hour --</p> <p>4 MR. REINS: Take a break?</p> <p>5 Sure, yeah, of course.</p> <p>6 THE VIDEOGRAPHER: Going off</p> <p>7 the record at 9:59.</p> <p>8 (Recess taken.)</p> <p>9 THE VIDEOGRAPHER: We're back</p> <p>10 on the record at 10:09.</p> <p>11 BY MR. REINS:</p> <p>12 Q. All right, sir. Looking at the</p> <p>13 document that's in front of you, which we've</p> <p>14 already -- which we started talking about. I</p> <p>15 want you to kind of look through the whole</p> <p>16 document real quick.</p> <p>17 Have you had an opportunity on our</p> <p>18 break to do so?</p> <p>19 A. I looked through it. Scanned</p> <p>20 through it, yeah.</p> <p>21 Q. Okay. So it looks like -- and</p> <p>22 again, we looked at the front pages and it has,</p> <p>23 you know, this Online Solutions, Inc., who you</p> <p>24 consulted with, and it kind of has the</p>



<p style="text-align: right;">Page 70</p> <p>1 screenshots and it has some guidance on how the  2 program is going to work, right?  3 Is that fair to say?  4 A. Yes.  5 Q. Then if you go to -- for instance,  6 it has an example of the -- of a report on  7 72534, which is 16, right?  8 A. It is an example of a report, yes.  9 Q. Okay. And is this an example of  10 the type of reporting you did after you changed  11 the system in January of 1996? Is this how you  12 reported?  13 MR. CLARK: Objection to  14 form.  15 Q. If you recall.  16 A. This is a report of just the  17 ingredients that are in the file. This is a  18 report out of -- if I believe so, this is the  19 scheduled item ingredient report. This is not a  20 sales recap report.  21 Q. Agreed. And, listen, I'm not  22 hiding anything. In May of '97, after working  23 with the DEA, you modified the system and it  24 stayed that way for some time.</p>	<p style="text-align: right;">Page 72</p> <p>1 little bit of time talking about.  2 Does that sound accurate?  3 MR. CLARK: Objection to  4 form.  5 A. This was the system we used.  6 Q. Yes.  7 A. This is not a report that we would  8 send to the DEA on this particular one that you  9 referenced on this page.  10 Q. That is exactly what I was trying  11 to ask you --  12 A. Okay.  13 Q. -- which is, what type of --  14 before May of '97 now -- we're going to get  15 there, and I have those other reports from that  16 time period. I mean, we have this manual, we  17 have this system, we have these samples, but  18 you're saying that --  19 A. Well --  20 MR. CLARK: Let him finish  21 his question.  22 Q. -- that is not how you reported.  23 So the question I have for you is, how did you  24 report before you made additional changes in May</p>
<p style="text-align: right;">Page 71</p> <p>1 A. Yes.  2 Q. But I'm just dealing with this  3 period of time before May 1st. And so what I'm  4 trying to ask you is, is this how you reported  5 pursuant to the --  6 MR. CLARK: Would the people  7 on the phone please mute.  8 UNIDENTIFIED SPEAKER: I'm  9 sorry.  10 MR. CLARK: Want to restart?  11 MR. REINS: Yeah, I think  12 I'll --  13 A. Yeah, rephrase that question.  14 MR. REINS: That was my  15 co-counsel.  16 MR. CLARK: She's helping  17 you.  18 MR. REINS: I need it.  19 BY MR. REINS:  20 Q. So during that window of time, so  21 you know exactly what I'm talking about, between  22 January of '96 through May of 1997, my  23 understanding this is the reporting mechanism,  24 this base ingredient formula that we've spent a</p>	<p style="text-align: right;">Page 73</p> <p>1 of '97?  2 MR. CLARK: Objection to  3 form.  4 A. Okay. The page that you've shown  5 me is just a base ingredient report. It would  6 show what items were in the -- in the drug file  7 and what ingredients were there and how much  8 their gram weights were for each product.  9 Q. Right.  10 A. That's not what we would report.  11 Q. Okay.  12 A. And you asked me if this was our  13 reporting mechanism. This was not our reporting  14 mechanism.  15 Q. Okay. So if you look at -- if you  16 look throughout this document, for instance,  17 72537, or look throughout the document, if you  18 see a sample of how you reported or the format  19 for which you reported, take your time, let me  20 know, and we'll identify for the record.  21 A. Both pages, 72537, I think that's  22 by item.  23 Q. Okay.  24 A. By base ingredient.</p>

Page 74

1 Q. Okay.  
 2 A. And then 72538 is by customer or  
 3 by the -- by this -- the person, and then the  
 4 contributing drugs that they purchased  
 5 underneath each one. So it was by customer.  
 6 Q. Which is --  
 7 A. The one -- 72538.  
 8 Q. Okay.  
 9 A. And that's the suspicious order  
 10 monitoring detail report that would go to the  
 11 DEA.  
 12 Q. That's how you did it?  
 13 A. Yes.  
 14 Q. Okay. If I wanted -- do you have  
 15 the ability to go back to 1996 and 1997 and pull  
 16 those reports?  
 17 MR. CLARK: Objection to  
 18 form.  
 19 A. I believe no, I don't.  
 20 Q. Have you tried?  
 21 A. Yes, I did.  
 22 Q. Okay. Why can't you?  
 23 A. The -- this was in '90 -- around  
 24 '97 or '98 is when we started to keep our

Page 75

1 records on a -- I'm trying to think of the name  
 2 of the system, but we started using -- it's a  
 3 coin system. It was a way to keep reports that  
 4 were like green bar screen reports or green bar  
 5 reports on an optical disk format, and that's  
 6 when we started to archive our inventory. But  
 7 we didn't keep records past that, going back  
 8 further. This is 20 years --  
 9 Q. Understood.  
 10 A. -- so -- yeah.  
 11 Q. So I just want to make it clear,  
 12 just before we leave each other today, because  
 13 you are the one to ask --  
 14 A. Right.  
 15 Q. -- that if we wanted these reports  
 16 which you say mimicked 72538, that you've tried  
 17 and you're unable to do so?  
 18 MR. CLARK: Objection to  
 19 form.  
 20 Go ahead.  
 21 A. I believe I submitted everything  
 22 that I could find, and I was unable to -- going  
 23 prior to this, no, I was not able to retrieve  
 24 any.

Page 76

1 Q. Or during this -- not really  
 2 prior, but after -- this was implemented in  
 3 January of '96 until May of 1997. You can't  
 4 access those reports, correct?  
 5 MR. CLARK: Same objection.  
 6 A. I don't recall whether I found an  
 7 instance of this report. I know going  
 8 forward -- I reported everything I could.  
 9 Everything I could retrieve, I gave you  
 10 everything. I don't recall whether or not I  
 11 found one copy of this report or not. If I did,  
 12 it was submitted as record. And if it's there,  
 13 it's there.  
 14 Q. Yeah. This is not an attacking  
 15 question --  
 16 A. No, I'm not trying to -- I'm just  
 17 trying to answer your question fully. I don't  
 18 recall whether or not you have -- I don't know  
 19 exactly when the reports that I retrieved  
 20 were -- what was submitted as evidence or as a  
 21 response to your -- to the request.  
 22 Q. Right. I don't believe I have any  
 23 for that time period, is my recollection. And I  
 24 just want to establish with you that you've

Page 77

1 tried and you don't --  
 2 A. Yes, I did try.  
 3 MR. CLARK: Let him finish  
 4 his question. I know it's  
 5 difficult.  
 6 THE WITNESS: I'm sorry.  
 7 Q. But just to be clear, because  
 8 there is -- let's go to 72542, because -- I'm  
 9 sorry, 72541. And that's going to take this  
 10 document to the very end of the document, which  
 11 is 7255 [sic]. And do you know what this  
 12 information is in these pages?  
 13 A. Okay. This is a field layout for  
 14 a file. Now, this is -- let me look this over,  
 15 because I'm not sure if these were -- these kind  
 16 of -- are these from our later system? That's  
 17 what I wanted to verify. Okay. So you're  
 18 asking me what 72541 is?  
 19 Q. Onwards, yes, to the end of the  
 20 document --  
 21 A. Okay. That is -- I'm sorry.  
 22 Q. Go ahead.  
 23 A. That's a database description.  
 24 Basically it tells what buckets of data are

<p style="text-align: right;">Page 78</p> <p>1 stored on the system to make the operating  2 system work. The programs interact with these  3 files.  4 Q. Can you dummy that up a little  5 bit --  6 MR. CLARK: Objection to  7 form.  8 Q. -- for me? What do you mean?  9 MR. CLARK: Same objection.  10 Go ahead.  11 A. I believe I've answered that.  12 This is a -- this is a field -- this is a  13 database description, 72541 is a database  14 description of the DEA ARCOS dictionary file.  15 These fields -- the data that I would receive  16 from the DEA ARCOS file would be downloaded via  17 one of our programs into this file.  18 Q. Got it.  19 A. And these fields in here tell  20 where -- it's just basically a layout of what  21 the data could be found at in what locations in  22 the file.  23 Q. Got it. Is this -- I don't want  24 to oversimplify it, but is this basically a</p>	<p style="text-align: right;">Page 80</p> <p>1 Go ahead.  2 A. Yes.  3 Q. Okay. All right. Moving along.  4 A. Oh, take that away. All right.  5 MR. REINS: Thanks. We'll  6 make that Number 2.  7 ---  8 (PSI - K. Harbauer Exhibit 2 marked.)  9 ---  10 BY MR. REINS:  11 Q. All right. We're going to now  12 look at PSI-1012, page 3. For record purposes,  13 PSI-66566.  14 Moving forward. So we've covered  15 now the January. We've covered through 1996.  16 Here we are in May of 1997. You're writing a  17 letter to Janice -- Ms. Janice Margreta.  18 A. Margreta.  19 Q. Okay. And specifically if we  20 looks, it says, "Dear Ms. Margreta, thank you  21 for taking time during your last audit to speak  22 with me concerning PS, Prescription Supply's,  23 suspicious order monitoring report."  24 Do you remember her visit?</p>
<p style="text-align: right;">Page 79</p> <p>1 how-to manual from online services on how this  2 program is going to work --  3 MR. CLARK: Objection.  4 Q. -- and how it should look, this  5 document?  6 A. It's the system documentation  7 of -- basically tells the -- the main parts of  8 the system, yes.  9 Q. Okay.  10 A. How-to, I wouldn't say how-to.  11 It's basically a system documentation. I don't  12 know.  13 Q. But it is instructional?  14 A. Yes, optionally, yes.  15 Q. Yeah. The reason I ask you is  16 because referring to that discovery response  17 before, it says, "A copy of this report was  18 submitted to the DEA monthly." The way I think  19 we can look at that, what that means is the  20 reports were submitted, to the best of your  21 knowledge. We just simply can't get our hands  22 on them, right?  23 MR. CLARK: Objection to  24 form.</p>	<p style="text-align: right;">Page 81</p> <p>1 A. Yes, I do.  2 Q. Tell me what you recall about it.  3 A. I recall that when the -- well,  4 the DEA agents, when they came in, Janice was  5 there and she wanted to talk specifically about  6 the suspicious order monitoring report that we  7 had been submitting over the prior time.  8 And if I remember, she said, "What  9 is this thing?" It's a big thick report. It  10 would show -- it would break down all the sales.  11 It was hard to read. I think she wanted it  12 simplified and streamlined.  13 So we were able to work together  14 and come up with a report that streamlined this  15 process a little bit. We basically used the --  16 we were also a member of Medi-Span and we used  17 the GPI equivalencies code, which -- anyway, we  18 used the GPI equivalency code to cross-reference  19 items of like items. And what we would do is we  20 added those items up and come up with an average  21 to get a variance. And that's basically what it  22 was, it was a variance report that we created.  23 Q. Best you can recall, which was  24 different from your prior report, which was</p>

<p style="text-align: right;">Page 82</p> <p>1 instituted in this January '96 to May of '97</p> <p>2 time frame, different in what way? I understand</p> <p>3 you just said it included a lot more data, but</p> <p>4 can you be a little bit more specific?</p> <p>5 A. How was this report different?</p> <p>6 Q. Yes, sir.</p> <p>7 A. I believe it was more concise. It</p> <p>8 would -- it would produce the sales. It was</p> <p>9 able -- it was a lot less data to weed through,</p> <p>10 wasn't so much space in between the pages. I</p> <p>11 think she was able to read the report. It was</p> <p>12 more effective.</p> <p>13 Q. And you said you worked together.</p> <p>14 Did -- literally you and Ms. Margreta?</p> <p>15 A. Yes, yes. She told me what she</p> <p>16 wanted. I was there. I took some notes. I</p> <p>17 programmed it. I was able to produce it while</p> <p>18 she was there for the audit. They continued the</p> <p>19 audit. I think she was -- I think it was a two-</p> <p>20 or three-day audit that they were there. By the</p> <p>21 end of that report day or that third day when I</p> <p>22 left, they had a copy of that report. And she</p> <p>23 was very happy with it.</p> <p>24 Q. Okay. So basically the finished</p>	<p style="text-align: right;">Page 84</p> <p>1 attempt to get any outliers that would be -- if</p> <p>2 there was only one customer buying the product,</p> <p>3 I wanted to make sure it appeared on the report</p> <p>4 to document the sale.</p> <p>5 Q. Got it. Let's go ahead and talk</p> <p>6 about the report because that's probably --</p> <p>7 we'll just explain it through that process.</p> <p>8 This will be Plaintiff's Exhibit</p> <p>9 Number 3, this correspondence.</p> <p>10 ---</p> <p>11 (PSI - K. Harbauer Exhibit 3 marked.)</p> <p>12 ---</p> <p>13 MR. CLARK: Is it 4?</p> <p>14 MR. REINS: I think it's 3.</p> <p>15 MR. CLARK: It is 3? Okay.</p> <p>16 MR. REINS: We may not have</p> <p>17 marked 1 which caused confusion.</p> <p>18 (Discussion held off the record.)</p> <p>19 BY MR. REINS:</p> <p>20 Q. So now what I'm going to hand you</p> <p>21 is this is going to be, what I believe, this</p> <p>22 modified new reporting mechanism. And, listen,</p> <p>23 I'm not going to go through all of them. I</p> <p>24 grabbed a month. So we'll look and kind of</p>
<p style="text-align: right;">Page 83</p> <p>1 product was a -- combined efforts of yourself</p> <p>2 with Ms. Margreta?</p> <p>3 A. Right.</p> <p>4 Q. Okay. So second paragraph, "I</p> <p>5 have been able to complete the program variance</p> <p>6 modifications as we discussed. However, I have</p> <p>7 made one significant change. I realized, after</p> <p>8 testing, that if there is only one store</p> <p>9 purchasing a product, their total sales would</p> <p>10 become the average. Therefore, these sales</p> <p>11 would have been omitted from the report.</p> <p>12 "As this is a potential problem, I</p> <p>13 have simply included in the report all</p> <p>14 single-store purchases totaling greater than</p> <p>15 three. Should this change not meet with your</p> <p>16 approval, please contact me. I will be most</p> <p>17 happy to discuss this with you."</p> <p>18 I have the report. We're about to</p> <p>19 get there. Three is the variable. Where did</p> <p>20 that number come from?</p> <p>21 MR. CLARK: Objection to</p> <p>22 form.</p> <p>23 A. I believe it was given to me by</p> <p>24 her in our prior discussions. And this was an</p>	<p style="text-align: right;">Page 85</p> <p>1 identify the varying information on that and how</p> <p>2 to hopefully interpret it.</p> <p>3 I guess to start off on the same</p> <p>4 ground, is this the report ultimately that was</p> <p>5 modified as of May of 1997?</p> <p>6 A. Yes. This is an example of one of</p> <p>7 the outputs, yep.</p> <p>8 Q. You say "example," but it's really</p> <p>9 actually one of them, right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 A. This is from November of '98.</p> <p>13 Q. Okay. What we're going to do</p> <p>14 now -- and please just be patient with me, but</p> <p>15 it's important to what we're doing -- is kind of</p> <p>16 walk through all the information contained on</p> <p>17 here and what it means.</p> <p>18 A. Great.</p> <p>19 Q. Okay. So let's go ahead and</p> <p>20 start. So, again, I represented in this --</p> <p>21 hopefully it's accurate there. We've got</p> <p>22 November of 1998. So let's go ahead and focus</p> <p>23 on the top part. Prescription Supply, Inc.</p> <p>24 we'll bring out, if you don't mind -- yep, that</p>

Page 86

1 top portion.  
 2 All right. So Prescription  
 3 Supply, Inc. DEA -- that's the DEA number --  
 4 suspicious order monitoring report. You and I  
 5 can agree from this point forward this was PSI's  
 6 suspicious order monitoring report pursuant to  
 7 the federal regulations as required, correct?  
 8 MR. CLARK: Objection to  
 9 form.  
 10 A. Yes.  
 11 Q. And so it says -- I don't need to  
 12 worry about that. It says, "Purchases averages  
 13 reflect total purchases of equivalent items  
 14 divided by number of stores who bought."  
 15 Can you explain that for us?  
 16 A. It's -- basically it is all of --  
 17 okay. So we have grouped the sales by like  
 18 items using an equivalency code from Medi-Span,  
 19 and so those sales are reflective in this report  
 20 by -- okay. So this report is by equivalency  
 21 item number, and those like items are all  
 22 grouped together, and we take the total sales,  
 23 total pieces of -- quantities sold during that  
 24 month time, and then we divide it by the number

Page 87

1 of stores who purchased.  
 2 We would come up with an average.  
 3 Any store that purchased above that average  
 4 would show up on the report. And any outlier  
 5 that would be there, which would be the -- if  
 6 only one store purchased the product, we bought  
 7 greater than three.  
 8 Q. Okay. When I look at -- strike  
 9 that.  
 10 Looking at the report, it appears  
 11 to only have single stores throughout. Is that  
 12 incorrect?  
 13 MR. CLARK: Objection to  
 14 form.  
 15 Q. I say that to you because each  
 16 entry which you look at has a particular  
 17 address.  
 18 MR. CLARK: Same objection.  
 19 A. This report is by the equivalent  
 20 item number. So each sale that would -- by item  
 21 would be there. So that's -- I mean, that's the  
 22 interpretation. So that store's -- I guess  
 23 what's the question about --  
 24 Q. The question is, is that --

Page 88

1 A. -- the customer name, the address?  
 2 These are the addresses that they purchased.  
 3 Q. The question is -- and maybe it's  
 4 better just to start going through them one by  
 5 one. But it appears that each entry where we're  
 6 dealing with like items is dealing with one  
 7 specific store.  
 8 A. Each entry, yes, where there is a  
 9 store, every time there's a customer number or  
 10 customer number and address, then the sales  
 11 would immediately follow.  
 12 Q. All right. I guess another way to  
 13 ask the question I did a poor job on is, I don't  
 14 see that multiple stores are being looked at  
 15 here.  
 16 MR. CLARK: Objection to  
 17 form.  
 18 Q. Let me rephrase. So let's just go  
 19 through it. I think that's the easiest thing.  
 20 So let's take the first entry, and  
 21 it's a little difficult to read so maybe the  
 22 screen will be helpful. So the first thing we  
 23 have is the -- you mentioned one thing, though,  
 24 before I missed. You said equivalency code

Page 89

1 from -- what group gave you that?  
 2 A. Medi-Span.  
 3 Q. Medi-Span. Tell me what that  
 4 means, equivalency code.  
 5 A. Like items.  
 6 Q. Fair enough.  
 7 A. Used for equivalency where, for  
 8 example, Valium is a branded name and Diazepam  
 9 is the generic equivalent, so they would be  
 10 grouped together.  
 11 Q. Understood. All right. So let's  
 12 go ahead, and the nice thing is we don't have  
 13 to -- once we do one, we'll probably have a good  
 14 feel for it. So equivalent product number,  
 15 you've described that.  
 16 Next is size. What does that  
 17 mean?  
 18 A. Can you point to what you're --  
 19 what are we --  
 20 MR. CLARK: If you look on  
 21 the screen here, Kirk, he's going  
 22 to highlight, I think.  
 23 A. Okay. You have Medi-Span  
 24 highlighted. So that --



Page 90

1 Q. Yeah. So what we'll do is --  
 2 A. Okay.  
 3 Q. -- we'll break out of here and  
 4 start this over. So we're going to be on the  
 5 very top left.  
 6 MR. REINS: If you want to  
 7 get rid of those highlights we've  
 8 got, Zach.  
 9 BY MR. REINS:  
 10 Q. Very top left it says "equivalent  
 11 product number," we just covered, very top. And  
 12 right next to it on the right is "size," is what  
 13 we're looking at next.  
 14 A. Right.  
 15 Q. Tell me what "size" means.  
 16 A. The size of the package.  
 17 Q. For laypeople -- you know, these  
 18 come in, what, different doses, different amount  
 19 of pills?  
 20 A. Different size, number of pills,  
 21 number of ounces, grams.  
 22 Q. Got it. Average pieces sold, how  
 23 do you come up with that number?  
 24 A. I think I've answered that

Page 91

1 already. Basically, the customers -- all the  
 2 customers that purchased that item during the  
 3 month, then we take that and we divide the  
 4 customers by that, by those numbers, to come up  
 5 with an average purchase.  
 6 Q. Okay. All right. And then  
 7 customer name, pretty self-explanatory.  
 8 Customer address, pretty self-explanatory.  
 9 And then we got the item number,  
 10 what is that?  
 11 A. That's Prescription Supply's item  
 12 number.  
 13 Q. Okay. NDC number?  
 14 A. Yep.  
 15 Q. What is that?  
 16 A. National drug code for the  
 17 product.  
 18 Q. Is that different -- description.  
 19 I'm sorry. What is that?  
 20 A. That's the description of the item  
 21 that tells what the product is.  
 22 Q. All right. And then we've got  
 23 transaction date.  
 24 A. Yep.

Page 92

1 Q. Is that when --  
 2 A. Year year, month month, day day  
 3 format. That's when the sale occurred.  
 4 Q. Would that mean it will be shipped  
 5 that day as well?  
 6 A. Yes.  
 7 Q. Transaction number, every  
 8 transaction has its own number?  
 9 A. Right. That was an invoice  
 10 number.  
 11 Q. Quantity would be the amount of  
 12 that?  
 13 A. The quantity purchased.  
 14 Q. Okay. Narcotic blank number?  
 15 A. Okay. If it was a narcotic item,  
 16 if it was a C-II and it required a narcotic  
 17 blank, then there would be a narcotic blank  
 18 number listed there.  
 19 Q. DEA registry?  
 20 A. That is the customer's DEA number.  
 21 Q. All right. So, again, I  
 22 appreciate your patience. We're going to go  
 23 through a real example now, okay?  
 24 A. Okay.

Page 93

1 Q. We'll do the first one for ease.  
 2 So we've got the product number there, and I  
 3 don't want to say it all, but we can look at it  
 4 ending in 1220, correct?  
 5 A. Yes.  
 6 Q. All right. Sorry. Go ahead.  
 7 A. I'm just -- yes.  
 8 Q. Okay. And then we have -- is that  
 9 the average -- I'm sorry. What's the 480 there?  
 10 A. That's the size.  
 11 Q. Meaning what?  
 12 A. That is the syrup. It's 480 --  
 13 it's ounces or grams or cc's or whatever it is.  
 14 Q. Got it. Then we have average  
 15 pieces sold.  
 16 A. Three.  
 17 Q. So that would be -- so here's  
 18 where I just want to ask you. I see Stevens --  
 19 if we look at the name underneath there,  
 20 Stevensons Drugstore, Inc. I see an address of  
 21 26 West Main Street, Shelby, Ohio. Am I  
 22 correct?  
 23 A. Correct.  
 24 Q. This is a single store, correct?

<p style="text-align: right;">Page 94</p> <p>1 A. Right.</p> <p>2 Q. So that would mean that there</p> <p>3 would be -- would that be the average or did you</p> <p>4 just use the variable --</p> <p>5 A. This is any --</p> <p>6 MR. CLARK: Objection to</p> <p>7 form.</p> <p>8 A. Which -- what are you referring to</p> <p>9 as the "average"?</p> <p>10 Q. It says "average pieces sold." I</p> <p>11 believe there's a three designated.</p> <p>12 A. Correct.</p> <p>13 Q. What does that mean?</p> <p>14 A. That's the average pieces sold to</p> <p>15 our stores. So we may have sold other stores</p> <p>16 sales that were under quantities of three.</p> <p>17 Q. Got it. So the average for the</p> <p>18 month of November, for that particular store,</p> <p>19 was three bottles of 480 milligrams, grams,</p> <p>20 whatever that might be --</p> <p>21 A. Right, of that product, yes.</p> <p>22 Q. -- of that product; is that</p> <p>23 correct?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. Over. This is where I think it</p> <p>2 got a little confusing with the two of us. The</p> <p>3 average must come from a different place than</p> <p>4 the actual order for November because the</p> <p>5 numbers are different, right?</p> <p>6 MR. CLARK: Objection to</p> <p>7 form.</p> <p>8 Q. So the average must be calculated</p> <p>9 in some other manner other than the actual. Do</p> <p>10 you know how the average pieces sold is</p> <p>11 calculated?</p> <p>12 MR. CLARK: Same objection.</p> <p>13 A. Yes, I know how it's calculated.</p> <p>14 Q. How?</p> <p>15 A. We would add the total for that</p> <p>16 item up, total pieces sold, and then divide it</p> <p>17 by the number of stores who purchased.</p> <p>18 Q. This is one store, though,</p> <p>19 correct?</p> <p>20 A. Divided by all the stores that</p> <p>21 purchased. If we had three stores that</p> <p>22 purchased, then we would -- we would use that as</p> <p>23 a divisor.</p> <p>24 Q. Got it.</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. And the three is looking at the</p> <p>2 average for that month, the prior month, the</p> <p>3 year before or how does that --</p> <p>4 A. Just that month.</p> <p>5 MR. CLARK: Object to form.</p> <p>6 Q. That month. All right. We get</p> <p>7 to -- underneath we got the item number. We got</p> <p>8 the NDC number. We got the description, which</p> <p>9 is what? Codamine syrup?</p> <p>10 A. Yes.</p> <p>11 Q. And then we've got the transaction</p> <p>12 date of 11/2/98. We've got the transaction</p> <p>13 number, and we've got that they ordered four; is</p> <p>14 that right?</p> <p>15 A. Yes.</p> <p>16 Q. And we've got the customer</p> <p>17 subtotal at -- because there was only one order,</p> <p>18 at the bottom that says "customer subtotal</p> <p>19 four." So for the month of November, they</p> <p>20 ordered four?</p> <p>21 A. Correct.</p> <p>22 Q. Different than the average of</p> <p>23 three?</p> <p>24 A. Right, over.</p>	<p style="text-align: right;">Page 97</p> <p>1 A. Okay.</p> <p>2 Q. I apologize if I missed that.</p> <p>3 A. Okay.</p> <p>4 Q. That's probably my fault.</p> <p>5 Now, when you say all the stores</p> <p>6 that purchased that product, you mean all the</p> <p>7 stores who purchased that product for the month</p> <p>8 of November?</p> <p>9 A. Correct.</p> <p>10 Q. When you say "all the stores," do</p> <p>11 you mean legitimately all of the stores that you</p> <p>12 provide that product to, all of them?</p> <p>13 MR. CLARK: Objection to</p> <p>14 form.</p> <p>15 A. Any of the customers that</p> <p>16 purchased that product in that classification,</p> <p>17 that's what I mean by all stores --</p> <p>18 Q. And the reason I ask --</p> <p>19 A. -- for that month.</p> <p>20 Q. And it may have sounded like a</p> <p>21 dumb question. Not broken down by region or</p> <p>22 state. It's all of your customers that</p> <p>23 purchased that product, that's how you derived</p> <p>24 the average?</p>

<p style="text-align: right;">Page 98</p> <p>1 A. Correct, correct.</p> <p>2 Q. Including that customer,</p> <p>3 obviously?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. All right. It makes this</p> <p>6 report if it is above the average; is that</p> <p>7 correct?</p> <p>8 MR. CLARK: Objection to</p> <p>9 form.</p> <p>10 A. Yes.</p> <p>11 Q. Okay. I believe we've covered</p> <p>12 this before, but to be very clear, your job is</p> <p>13 to assimilate, gather this data, then submit it</p> <p>14 at the end of the month. You are not the one,</p> <p>15 if there is a variance, regardless of what the</p> <p>16 variance is, to make the determination to stop</p> <p>17 the shipment, correct?</p> <p>18 MR. CLARK: Objection to</p> <p>19 form.</p> <p>20 Go ahead.</p> <p>21 A. Correct.</p> <p>22 Q. And this is a look-back report,</p> <p>23 meaning that all of these sales have already</p> <p>24 occurred, meaning the shipments have already</p>	<p style="text-align: right;">Page 100</p> <p>1 significant variance from the average --</p> <p>2 MR. CLARK: Objection to</p> <p>3 form.</p> <p>4 Q. -- right?</p> <p>5 MR. CLARK: Same objection.</p> <p>6 A. Significant variance. Yes.</p> <p>7 Q. And let me ask you this: The</p> <p>8 controlled substance -- what's the title for</p> <p>9 that person? I know it went from Mr. Thomas</p> <p>10 Schoen to Jim. It's controlled substance</p> <p>11 manager or overseer or --</p> <p>12 A. Controlled substance officer, I</p> <p>13 would say.</p> <p>14 Q. They get these reports --</p> <p>15 A. Compliance officer I guess it</p> <p>16 would be.</p> <p>17 Q. Yes, sir.</p> <p>18 A. Yeah.</p> <p>19 Q. Do they get these reports?</p> <p>20 A. Yes, but not in this format also.</p> <p>21 Q. How do they get them?</p> <p>22 A. We also produced -- I actually</p> <p>23 produced two reports. The DEA wanted it by</p> <p>24 equivalent item, and I also re-sorted it by</p>
<p style="text-align: right;">Page 99</p> <p>1 taken place, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. Are you aware if there is a</p> <p>4 variance level which would trigger a stop</p> <p>5 shipment? Are you aware? Meaning, "Hey, this</p> <p>6 one is one above, but if it's this many above or</p> <p>7 if there is this many a percentage above, we</p> <p>8 stop automatically"? If you know.</p> <p>9 MR. CLARK: Objection to</p> <p>10 form.</p> <p>11 A. I am not aware of one.</p> <p>12 Q. Okay. So, for instance, if you go</p> <p>13 to, on the bottom right-hand number 158988,</p> <p>14 which is going to be, for us, page 22, and if we</p> <p>15 look at -- if you look at the second full entry</p> <p>16 there dealing with Duragesic.</p> <p>17 Do you see that?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Is that a "yes"?</p> <p>20 A. Oh, yes.</p> <p>21 Q. Hey, listen, you had a good run.</p> <p>22 It says the average is 7. The</p> <p>23 actual is 32 of what was actually sold. You and</p> <p>24 I can agree, without being math guys, that's a</p>	<p style="text-align: right;">Page 101</p> <p>1 customer so we could see the customers that</p> <p>2 hit -- we could look at the customer overall for</p> <p>3 that month to see what all his purchases were,</p> <p>4 not only just by one item.</p> <p>5 So we produced this by customer</p> <p>6 also. Same data, it was just in a different</p> <p>7 format. It was sorted differently.</p> <p>8 Q. You could do that for us as well?</p> <p>9 MR. CLARK: Objection to</p> <p>10 form.</p> <p>11 A. Yes.</p> <p>12 Q. And is it your testimony that</p> <p>13 the -- whether it be Tom or Jim -- forgive me,</p> <p>14 they've got the same last name --</p> <p>15 A. Right.</p> <p>16 Q. -- that they would get that report</p> <p>17 only, or would they get both --</p> <p>18 MR. CLARK: Objection to</p> <p>19 form.</p> <p>20 Q. -- if you know. There's two</p> <p>21 reports. I think this one that we're looking at</p> <p>22 is -- and let's go ahead and -- what is this</p> <p>23 called? This is a suspicious order report,</p> <p>24 right?</p>

<p style="text-align: right;">Page 102</p> <p>1 A. Yes, it's a suspicious order --</p> <p>2 what I know now, it could be more of a variance</p> <p>3 report, but it is a suspicious order monitoring</p> <p>4 report.</p> <p>5 They -- now, you asked me, as far</p> <p>6 as Tom, would he get this report. He wouldn't</p> <p>7 get this exact report. He would get the same</p> <p>8 data on another report sorted by customer. So</p> <p>9 he would look at that customer, and they would</p> <p>10 overview that every month. I would run a</p> <p>11 month-end report.</p> <p>12 Q. You would give both Jim and Tom</p> <p>13 that report?</p> <p>14 A. Yes.</p> <p>15 Q. What's it called?</p> <p>16 MR. CLARK: Objection to</p> <p>17 form.</p> <p>18 A. It's the same report, except it</p> <p>19 would say, instead of "sorted by equivalent</p> <p>20 product" at the top, it says "sorted by</p> <p>21 customer."</p> <p>22 Q. Got it. Would it show the</p> <p>23 variances for the equivalent product, the other</p> <p>24 report?</p>	<p style="text-align: right;">Page 104</p> <p>1 MR. CLARK: Objection to</p> <p>2 form.</p> <p>3 Q. -- if there are any?</p> <p>4 A. Yes.</p> <p>5 Q. Got it. And this is where I'm</p> <p>6 going to pull you out. And what they did with</p> <p>7 that information or what they were required to</p> <p>8 do, you were not involved in, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. You just know that's the</p> <p>11 report they wanted?</p> <p>12 MR. CLARK: Objection to</p> <p>13 form.</p> <p>14 MR. REINS: Did you get the</p> <p>15 answer?</p> <p>16 Q. I believe you said "yes," correct?</p> <p>17 A. Yes.</p> <p>18 Q. All right. Go to page 30 of that</p> <p>19 document, which is going to be -- for you, sir,</p> <p>20 it's going to be 158996.</p> <p>21 So, for instance, that report</p> <p>22 would have shown, if we look on the bottom</p> <p>23 there, this particular Drug Corner, Inc.,</p> <p>24 according to the average, OxyContin, we've got</p>
<p style="text-align: right;">Page 103</p> <p>1 MR. CLARK: Objection to</p> <p>2 form.</p> <p>3 A. Absolutely. Yes, it would. It</p> <p>4 would have all the same data but it just allowed</p> <p>5 us to look at the customer as a whole, not just</p> <p>6 one particular item.</p> <p>7 Q. I understand, but would it break</p> <p>8 down -- underneath the customer, would it break</p> <p>9 down the equivalent narcotics?</p> <p>10 A. Yes.</p> <p>11 Q. By group?</p> <p>12 A. Yes --</p> <p>13 Q. Meaning --</p> <p>14 A. Yes.</p> <p>15 Q. Meaning --</p> <p>16 A. Yes.</p> <p>17 Q. So good a question you had to say</p> <p>18 "yes" three times.</p> <p>19 A. I didn't know if you heard me.</p> <p>20 Q. Meaning that this exact</p> <p>21 information for this particular customer would</p> <p>22 be shown, meaning average 7, they got 32, but it</p> <p>23 would also show the other variances for the</p> <p>24 other medications --</p>	<p style="text-align: right;">Page 105</p> <p>1 80 milligrams, that's the dosage here. The</p> <p>2 average order would be 5. And this particular</p> <p>3 customer, at this particular building, received</p> <p>4 10 for the month of November; is that right?</p> <p>5 MR. CLARK: Objection to</p> <p>6 form.</p> <p>7 A. You're looking at the other page?</p> <p>8 Q. Yes, sir. It carries over.</p> <p>9 Sorry.</p> <p>10 A. Correct, correct.</p> <p>11 Q. Okay. And that would be more than</p> <p>12 double, correct?</p> <p>13 A. Yes.</p> <p>14 Q. All right. And then, what they</p> <p>15 did with it, meaning the due diligence</p> <p>16 requirement, any investigation, any picking up</p> <p>17 the phone and calling and finding out, you were</p> <p>18 not privy to that, correct?</p> <p>19 A. Correct.</p> <p>20 MR. CLARK: Objection to</p> <p>21 form.</p> <p>22 A. Correct.</p> <p>23 Q. Any policies that, "Hey, you're</p> <p>24 already over the average, we're going to not</p>

<p style="text-align: right;">Page 106</p> <p>1 ship this," any of those safety mechanisms,  2 you're not familiar with those, correct?  3 MR. CLARK: Same objection.  4 A. Yes.  5 Q. Okay. Now, my understanding is  6 this is how you reported, the format we just  7 looked at, until 2013; is that right?  8 A. Yes.  9 Q. And then in 2013, what happens?  10 MR. CLARK: Objection to  11 form.  12 A. The DEA had an audit. They came  13 in and did a periodic audit of us, and Janice  14 Margreta -- or I'm sorry, Angie Frances, was  15 our -- she's out of the Detroit office. Between  16 this time, we switched to the Detroit office.  17 They switched us.  18 So Angie Frances was there and she  19 said she didn't want to see that report anymore.  20 Stop sending it to her, is what she told me.  21 Q. Okay. So Angie Frances worked out  22 of what office?  23 A. The Detroit office.  24 Q. The Detroit office. And who did</p>	<p style="text-align: right;">Page 108</p> <p>1 discussing -- okay. We have a threshold system  2 in place that we put in, and we were discussing  3 that. And, you know, I keep sending her these  4 suspicious order monitoring variance reports. I  5 kept sending those to her as well.  6 And she -- as best I can recall,  7 what she said was, "Stop sending those to me,"  8 because the emphasis was on orders being stopped  9 prior to their shipment as opposed to reporting  10 after the fact that the orders are sold.  11 Q. Got it. Let's talk about that.  12 So did the threshold system --  13 which sounds like it was a system that allowed  14 for some reporting.  15 MR. CLARK: Objection to  16 form.  17 Q. She said, "I don't need the  18 threshold system reports as well as these  19 reports."  20 So she was getting threshold  21 reports, right?  22 MR. CLARK: Objection to  23 form.  24 A. We were talking about the</p>
<p style="text-align: right;">Page 107</p> <p>1 she relay those words to?  2 A. Myself.  3 MR. CLARK: Objection to  4 form.  5 A. Myself.  6 Q. Okay. And was it a phone call or  7 in person?  8 A. It was in person.  9 Q. Okay. She does an audit at  10 your -- at your building. Would you get  11 audited -- how often?  12 MR. CLARK: Objection to  13 form.  14 A. It could be at any time. They  15 could come in and -- it was always a surprise  16 when they walked in the door. I would say every  17 four years or so on average. I don't know.  18 Maybe more. Maybe less. I can't say for sure.  19 Q. Got it. And then so she comes in.  20 Tell me as best you can recall -- sorry, there  21 might be some redundancy. She comes into your  22 office or -- you have a conversation with her  23 and she says what exactly, that you can recall?  24 A. If I remember correctly, we were</p>	<p style="text-align: right;">Page 109</p> <p>1 threshold system itself, about the holding of  2 orders is what we were doing.  3 Q. Are there reports generated  4 regarding that?  5 MR. CLARK: Same objection.  6 A. There are no reports from the  7 threshold system.  8 Q. Okay.  9 A. There are audits. I mean, there  10 are log files that are generated but no reports.  11 Q. Okay. Tell me about the threshold  12 system.  13 MR. CLARK: Objection to  14 form.  15 A. Can I rephrase something? I  16 just -- can we go back to that question?  17 Q. No way.  18 A. Please.  19 Q. No. It's too late.  20 A. When I tell you there was no  21 reports, we were constantly pawing through this  22 data and reporting -- recapping and reporting.  23 As far as going to the DEA, we may not have  24 generated a monthly report as far as the</p>



<p style="text-align: right;">Page 110</p> <p>1 threshold system, but we did -- you know, we  2 kept -- continued on, and that's what that  3 conversation was about, us ceasing the -- or the  4 shipment of the suspicious order monitoring  5 variance report.  6 Q. All right. Let's just tie a bow  7 on that. So I asked you to --  8 A. Okay. I'm sorry.  9 Q. No, no. Don't -- no, no. I'm  10 not --  11 MR. CLARK: He's asking a  12 question.  13 Q. You didn't do anything wrong.  14 I want you to clarify, to be  15 clear. It's important we get it right.  16 2013 forward until here we are  17 sitting here today, 2019, no reports have been  18 submitted since that time; is that right?  19 MR. CLARK: Objection to  20 form.  21 Q. Let me be more specific. The  22 report that we just went over in detail,  23 specifically -- and that's going to be -- sorry.  24 Plaintiffs' Exhibit Number 4.</p>	<p style="text-align: right;">Page 112</p> <p>1 form.  2 A. Not on a periodic timetable --  3 Q. Okay.  4 A. -- submitting reports.  5 Q. What type of reports have you  6 submitted even though they're non-periodic?  7 MR. CLARK: Same objection.  8 A. Anywhere from sales recaps of  9 certain stores. You know, I know there's -- as  10 far as reports, you're talking about just data  11 reports. Anything as far as recapping certain  12 stores, sales purchases -- you know, it may be  13 about a specific store or whatever, but there  14 may be phone calls generated.  15 Q. Let's stick with reports for now,  16 if you don't mind.  17 A. Okay.  18 Q. This type of information that you  19 just identified to me, do you keep a log, do you  20 have a record of what you've submitted since  21 2013 regarding these particular items?  22 MR. CLARK: Objection to  23 form.  24 Q. Meaning if I wanted to see them,</p>
<p style="text-align: right;">Page 111</p> <p>1 ---  2 (PSI - K. Harbauer Exhibit 4 marked.)  3 ---  4 BY MR. REINS:  5 Q. That report specifically that we  6 just looked at -- you know, what I'm talking  7 about?  8 A. Yes.  9 Q. Yeah, the suspicious order  10 monitoring report, that stopped in 2013?  11 A. Correct.  12 Q. We've established that?  13 A. Correct.  14 Q. You haven't done it since then,  15 correct?  16 A. Correct.  17 Q. All right. Now, I think what I  18 asked you is, are there any other type of  19 reports that you've submitted since 2013, and I  20 think what you're saying is, "Hey, we have  21 dialogue, but there are no written reports that  22 we've submitted since that time period"; is that  23 accurate or inaccurate?  24 MR. CLARK: Objection to</p>	<p style="text-align: right;">Page 113</p> <p>1 "Hey, what have you sent, I'd like to see what  2 you've sent." Do you have access to that?  3 MR. CLARK: Same objection.  4 A. I guess some of those reports --  5 yes, because the other things that I was talking  6 about, ARCOS reporting. We would do ARCOS  7 reporting as well as -- so we have all those.  8 Anything we've submitted electronically to the  9 DEA we should be able to produce.  10 Q. Okay.  11 A. And I think we did, as far as  12 three -- we did go through all of that. We did  13 send all that in.  14 Q. Okay. What would trigger those  15 reports? Would it be a phone call from them?  16 Would it be some internal system that would say,  17 "We need to send this in"? What would trigger  18 the items that you just said were reported post  19 --  20 A. Probably --  21 MR. CLARK: Hold on. Let him  22 finish his question.  23 THE WITNESS: All right. I'm  24 sorry.</p>

<p style="text-align: right;">Page 114</p> <p>1 BY MR. REINS:</p> <p>2 Q. Go ahead.</p> <p>3 MR. CLARK: Let me add my</p> <p>4 objection. Objection to form.</p> <p>5 Now go.</p> <p>6 A. Can you start the question over</p> <p>7 and just --</p> <p>8 Q. Yeah. I was just trying to say,</p> <p>9 what would trigger that type of information</p> <p>10 from -- to be reported? Would it be a phone</p> <p>11 call? What would trigger these types of things</p> <p>12 being reported in 2013 forward?</p> <p>13 MR. CLARK: Objection to</p> <p>14 form.</p> <p>15 A. Depending on the report type.</p> <p>16 Some -- I guess ARCOS we report every -- on an</p> <p>17 every -- I guess a monthly -- I told you that</p> <p>18 they weren't monthly, but the ARCOS reports are.</p> <p>19 I want to qualify that. It could be a phone</p> <p>20 call from the DEA. It could be a form of an</p> <p>21 e-mail sent from a DEA agent or the Detroit</p> <p>22 office or someone. It could be an e-mail</p> <p>23 requesting data.</p> <p>24 Q. Do you keep all the e-mail</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. I apologize in advance. I</p> <p>2 remember asking you about your threshold system,</p> <p>3 but I don't remember your responses.</p> <p>4 How does your threshold system</p> <p>5 work?</p> <p>6 A. Our threshold system that we put</p> <p>7 in 2008? Okay. So the threshold system</p> <p>8 works -- just give me a second here. In the</p> <p>9 threshold, basically what that does is caps</p> <p>10 sales by -- by the quantities per store.</p> <p>11 Basically -- I'm drawing a blank here. I'm</p> <p>12 sorry.</p> <p>13 Q. That's all right.</p> <p>14 A. But -- okay. The -- so our</p> <p>15 threshold system that's there, basically will --</p> <p>16 we take the product that comes in. There's</p> <p>17 thresholds and we divide it up in family, drug</p> <p>18 family names, and we try to adhere to an</p> <p>19 industry guideline, the NWDA or HDMA guidelines,</p> <p>20 to -- that's what this system was created as.</p> <p>21 And it breaks the families down -- drugs into</p> <p>22 families.</p> <p>23 And we can set thresholds in there</p> <p>24 for the customer specific on any purchases that</p>
<p style="text-align: right;">Page 115</p> <p>1 correspondence from the DEA?</p> <p>2 A. We do not.</p> <p>3 Q. Did you ever get anything in</p> <p>4 writing substantiating you're no longer required</p> <p>5 to report suspicious order monitoring reports</p> <p>6 anymore?</p> <p>7 MR. CLARK: Objection to</p> <p>8 form.</p> <p>9 A. No.</p> <p>10 Q. Okay. Do you still work with --</p> <p>11 I'm sorry. I forgot her name.</p> <p>12 A. Angie Frances.</p> <p>13 Q. Is she still the one that</p> <p>14 oversees --</p> <p>15 A. She has passed away or I think she</p> <p>16 has health reasons. I don't think she's our</p> <p>17 covering agent anymore.</p> <p>18 Q. Do you know who is now?</p> <p>19 A. I don't know the current one. I</p> <p>20 want to say Alan Drumheller, but I know he's</p> <p>21 there. There's several agents they deal with,</p> <p>22 but I couldn't tell you the current agent's</p> <p>23 name, no, because I haven't had a chance to</p> <p>24 really work them on a one-on-one basis to know.</p>	<p style="text-align: right;">Page 117</p> <p>1 go on. If the order is -- comes in and it's</p> <p>2 above the threshold, it stops the order before</p> <p>3 it goes out.</p> <p>4 Q. A couple questions.</p> <p>5 A. Yeah.</p> <p>6 Q. One, who sets the threshold?</p> <p>7 A. Jim Schoen.</p> <p>8 Q. Two, can it be overridden, if you</p> <p>9 know?</p> <p>10 A. Yes.</p> <p>11 Q. Who has the power to do that?</p> <p>12 A. Jim Schoen.</p> <p>13 Q. You said it was implemented in</p> <p>14 2008?</p> <p>15 A. Yes.</p> <p>16 Q. Was there any type of a comparable</p> <p>17 system before 2008?</p> <p>18 MR. CLARK: Objection to</p> <p>19 form.</p> <p>20 A. Comparable threshold system, no.</p> <p>21 Q. How did it work before then, if</p> <p>22 you know?</p> <p>23 MR. CLARK: Objection to</p> <p>24 form.</p>

<p style="text-align: right;">Page 118</p> <p>1 Q. Here's what I'm asking. It's a          2 little confusing. There were thresholds. I          3 know there were because I see them in the          4 documents. I understand that's why Jim's still          5 involved in that. I guess what I'm saying is,          6 there wasn't a system in place to stop the sales          7 from being shipped prior to 2008, as best you          8 recall; fair to say?</p> <p>9 MR. CLARK: Objection to          10 form.</p> <p>11 A. When you say "system," every order          12 that comes through Prescription Supply is held          13 for -- any controlled substance, any C-II          14 actually gets held at the system. It doesn't          15 matter if the order comes in via EDI, electronic          16 inventory, website, CRT order entry, doesn't          17 matter. Okay. Those orders come in and they're          18 held. It goes to a review right there at that          19 point. He has to choose whether or not he's          20 going to fill or not fill that order.</p> <p>21 Q. "He" being Jim?</p> <p>22 A. Jim Schoen, yes.</p> <p>23 Q. So he overseas every narcotic          24 order?</p>	<p style="text-align: right;">Page 120</p> <p>1 MR. CLARK: Objection to          2 form.</p> <p>3 A. Well, I think that it's -- the          4 orders will not get shipped and it's not --          5 you're not chasing your tail or recapping sales          6 that have already gone out.</p> <p>7 Q. Fair answer.</p> <p>8 Someone says, "Why did it take so          9 long" --</p> <p>10 MR. CLARK: Objection to          11 form.</p> <p>12 Q. -- what would you say to that?</p> <p>13 MR. CLARK: Objection to          14 form.</p> <p>15 A. Why did what take so long?</p> <p>16 Q. Let me rephrase the question. Why          17 was that implemented in 2008 and not before          18 then, if you know?</p> <p>19 MR. CLARK: Object to form.</p> <p>20 A. In 2008 we had a meeting with the          21 DEA. There was an emphasis on stopping the          22 orders before they were shipped. At that time          23 we -- we got into the threshold. We set up a          24 threshold system just to do that. Now, this</p>
<p style="text-align: right;">Page 119</p> <p>1 A. Yes, he does.</p> <p>2 Q. Tell me how the system changed,          3 then, in 2008.</p> <p>4 MR. CLARK: Objection to          5 form.</p> <p>6 A. In 2008, that system, what it did,          7 is basically it holds the order -- it will -- if          8 a customer hits a threshold, it will -- it will          9 change the ship code specifically and the order.          10 It will change -- it will stop. It says          11 "maximum quantity exceeded." Okay.</p> <p>12 So this system allows us to have          13 the ability to set certain thresholds in pill          14 counts or by relevance factor, how many pills          15 that store can buy for a particular drug family.          16 So it allows us to stop the orders before they          17 even happen.</p> <p>18 Q. Is that a safer practice, in your          19 opinion?</p> <p>20 A. I believe so.</p> <p>21 MR. CLARK: Objection to          22 form.</p> <p>23 A. I believe so, yes.</p> <p>24 Q. Tell me why.</p>	<p style="text-align: right;">Page 121</p> <p>1 system is in other wholesalers also. Online --          2 this is Online Solutions as well.</p> <p>3 Q. Do you know if other companies had          4 the system in place before you guys did?</p> <p>5 MR. CLARK: Objection to          6 form.</p> <p>7 Q. If you know.</p> <p>8 A. I don't believe so. I think they          9 all went in pretty much the same time because          10 there was a push by the DEA to do so.</p> <p>11 Q. Was there something within your          12 operation that the DEA -- that triggered the DEA          13 to focus on that with your operations, if you          14 know?</p> <p>15 MR. CLARK: Objection to          16 form.</p> <p>17 A. I don't think it was our          18 operations. I think it was a -- as a matter of          19 fact, as an audit. They came in as a review.</p> <p>20 Q. And listen, you've been doing this          21 40 years.</p> <p>22 A. Yeah.</p> <p>23 Q. You seem like a common sense kind          24 of fellow. It makes sense when the duty is to</p>

Page 122

1 try and prevent these types of narcotics --  
2 which you understand we're in an opioid crisis,  
3 right?

4 MR. CLARK: Objection to  
5 form.

6 A. Yes.

7 Q. It makes sense to stop opioids  
8 from getting into the marketplace as opposed to  
9 learning that they got into the marketplace  
10 after the fact? It makes more sense to focus on  
11 the prevention, right?

12 MR. CLARK: Objection to  
13 form.

14 A. I agree.

15 Q. And the reason why is because if  
16 they're already in the marketplace, there's  
17 little that can be done to prevent the  
18 diversion, right?

19 MR. CLARK: Objection to  
20 form.

21 A. I don't know what you mean by  
22 that, as far as preventing the diversion. Once  
23 they're in the marketplace, once they're sold,  
24 yes, I don't think you can stop it if they're --

Page 123

1 if they're getting diverted somewhere.

2 Q. And you as a distributor have the  
3 ability -- and this program in 2008 that was  
4 implemented shows that -- the ability to stop  
5 suspicious orders or orders that may be leading  
6 to diversion before they get into the  
7 marketplace; we can agree on that, right?

8 A. Yes.

9 MR. CLARK: Objection to  
10 form. Let me get my objection in  
11 before you answer.

12 THE WITNESS: Fine.

13 Q. Which makes it safer for  
14 everybody, right?

15 MR. CLARK: Same objection.

16 A. Yes.

17 Q. Now, who from the DEA made the  
18 suggestion to your company that, "Hey, this  
19 would be a better approach."

20 MR. CLARK: Objection to  
21 form.

22 Q. If you recall.

23 MR. CLARK: Same objection.

24 A. I believe it was Angie Frances,

Page 124

1 our DEA agent.

2 Now, also, through HDA, through  
3 the industry guidelines that we belong as a  
4 member. I think there was a whole switch. The  
5 whole paradigm had changed at that time through  
6 the -- through the whole industry.

7 Q. Do you know -- do you know when  
8 OxyContin hit the marketplace?

9 MR. CLARK: Objection to  
10 form.

11 A. No, I do not.

12 Q. Do you remember ever having any  
13 meetings with any of upper management regarding  
14 the addictive and destructive nature of Oxy?

15 MR. CLARK: Objection to  
16 form.

17 A. No, I do not.

18 Q. Were there any meetings  
19 regarding -- you're aware of the opioid crisis?  
20 I think your sister said she's seen it on the  
21 news. Was there any internal meetings or  
22 investigations or things that were passed out to  
23 read saying, "Hey, this abuse and addiction to  
24 OxyContin, this is a real, real problem"?

Page 125

1 MR. CLARK: Objection to  
2 form.

3 A. From our internal company, no.

4 Q. I assume you have seen it on the  
5 news?

6 A. Absolutely.

7 Q. At least from your news viewing,  
8 you're aware that it affects communities  
9 throughout this country?

10 MR. CLARK: Objection to  
11 form.

12 A. Yes, yes.

13 Q. All races, all genders?

14 MR. CLARK: Same objection.

15 Q. Correct?

16 A. Yes.

17 Q. All economic levels of this  
18 society, correct?

19 MR. CLARK: Same objection.

20 A. Yes.

21 Q. All right. Are you doing okay?

22 A. Yeah, I'm fine.

23 ---

24 (PSI - K. Harbauer Exhibit 5 marked.)

<p style="text-align: right;">Page 126</p> <p>1               ---</p> <p>2               Q. All right. Moving along. I'm</p> <p>3 going to have you out of here by noon.</p> <p>4               All right. If we could look at --</p> <p>5 this is going to be PSI-653. All right, sir. I</p> <p>6 know from talking to you, you are not involved</p> <p>7 in the development and/or the implementation of</p> <p>8 policies and procedures, if I understood you</p> <p>9 correctly.</p> <p>10              MR. CLARK: Objection; form.</p> <p>11              Q. Correct?</p> <p>12              A. Correct.</p> <p>13              Q. All right. But have you -- have</p> <p>14 you read them?</p> <p>15              MR. CLARK: Same objection.</p> <p>16              A. Yes, I've been through them. Yes,</p> <p>17 I've read them before.</p> <p>18              Q. Some questions may seem silly but</p> <p>19 I have to ask them.</p> <p>20              So we're going to look at this.</p> <p>21 It's a Prescription Supply, Inc. policy and</p> <p>22 procedure. This is controlled substances, and</p> <p>23 this was implemented, effective date of</p> <p>24 June 2000.</p>	<p style="text-align: right;">Page 128</p> <p>1              Q. That's okay.</p> <p>2              "IT Manager," that would be you,</p> <p>3 correct?</p> <p>4              A. Correct.</p> <p>5              Q. "DR/DR Supervisor," that would</p> <p>6 be -- would that be your sister, or would that</p> <p>7 be Tom's?</p> <p>8              A. Candy and then probably Tom Schoen</p> <p>9 would be the DR supervisor, I believe.</p> <p>10             Q. Got it. So "Responsibilities,"</p> <p>11 we'll focus on you there, the third paragraph,</p> <p>12 "IT Manager shall compile reports monthly</p> <p>13 regarding purchases of controlled substances,</p> <p>14 threshold limits and suspicious order</p> <p>15 monitoring."</p> <p>16              That's of June of 2000.</p> <p>17              A. Okay.</p> <p>18              Q. "Purchases of controlled</p> <p>19 substances." What reports monthly would there</p> <p>20 be, what we haven't discussed already?</p> <p>21              MR. CLARK: Objection to</p> <p>22 form.</p> <p>23              A. I guess I'd want to qualify that</p> <p>24 statement there, because I don't think that's</p>
<p style="text-align: right;">Page 127</p> <p>1              MR. CLARK: Lance, do you</p> <p>2 have an extra copy?</p> <p>3              MR. REINS: I do. I'm sorry.</p> <p>4              MR. CLARK: Thank you.</p> <p>5 BY MR. REINS:</p> <p>6              Q. All right. Sir, you've read this</p> <p>7 before?</p> <p>8              A. I believe so, but I'd like to look</p> <p>9 it over.</p> <p>10             Q. Of course you can.</p> <p>11              A. Okay.</p> <p>12              Q. All right. So the policy says,</p> <p>13 "Regarding controlled substances, Prescription</p> <p>14 Supply, Inc., will maintain proper security,</p> <p>15 document, and monitor all transactions according</p> <p>16 to state and federal regulation."</p> <p>17              And specifically this applies to</p> <p>18 "Controlled Substance Handler," which I believe</p> <p>19 in 2000 -- was it Jim by that point in time?</p> <p>20              A. Yes.</p> <p>21              Q. All right. "Receiving Manager,"</p> <p>22 who was that -- or is that, I should say?</p> <p>23              MR. CLARK: Objection to</p> <p>24 form.</p>	<p style="text-align: right;">Page 129</p> <p>1 true. The IT manager. I don't -- I don't set</p> <p>2 threshold limits, but basically I do the</p> <p>3 reporting and put the tools in place so that Jim</p> <p>4 can make those decisions.</p> <p>5              Q. And I'll tell you that's how I</p> <p>6 read it, to be fair.</p> <p>7              A. Okay.</p> <p>8              Q. This is not --</p> <p>9              A. Yeah, I'm just worried if it's a</p> <p>10 word -- guide word. Okay. Go ahead.</p> <p>11              Q. You've been clear, but I think</p> <p>12 what this says, the way I took it is that you're</p> <p>13 going to be the one that simply compiles the</p> <p>14 reports, which I think you've testified</p> <p>15 truthfully you do, right?</p> <p>16              A. Yes.</p> <p>17              MR. CLARK: Objection to</p> <p>18 form.</p> <p>19              Q. So my question to you is, other</p> <p>20 than the reports we've talked about, which is</p> <p>21 the -- we've talked about the suspicious order</p> <p>22 monitoring report. We talked about the version</p> <p>23 that would include the customer view you told me</p> <p>24 about, which is a different setting.</p>



Page 130

1 A. Uh-huh.  
2 Q. Are there any other reports, other  
3 than those two, or other views of those reports,  
4 let me say, that we haven't discussed regarding  
5 controlled substances?  
6 MR. CLARK: Objection to  
7 form.  
8 Q. Other than the sales themselves,  
9 of course.  
10 A. Yes. There's other reports that  
11 we would run. You know, in the -- when it came  
12 down to setting up the thresholds, for example,  
13 our threshold reports, we looked at sales over a  
14 yearly time, a three-month period, a one-month  
15 period. I ran recaps for them, "them" being Jim  
16 Schoen and Tom Schoen.  
17 So there's reports there that run.  
18 We have analysis -- we have customer analysis on  
19 our system where they can look to see -- you  
20 know, he can look at a customer's buying  
21 patterns, what they're buying, you know, as far  
22 as the system being generated giving back  
23 information to their previous sales.  
24 What other reports? I mean,

Page 131

1 there's -- sales recaps we do all the time.  
2 Q. But the other one, you could  
3 actually view the specific narcotic, what that  
4 customer has purchased in the three months, six  
5 months, year previously to see if there's any  
6 patterns there, right?  
7 MR. CLARK: Objection to  
8 form.  
9 A. Yes, by drug family.  
10 Q. Got it. All right. And then  
11 you -- this says, "Reports regarding threshold  
12 limits." Threshold -- I think you said  
13 threshold reports. Forgive me. I don't  
14 remember discussing those reports. What reports  
15 would those be?  
16 MR. CLARK: Objection; form.  
17 A. Well, I was just thinking -- just  
18 a recap of where -- okay. It's either a report  
19 form or it's a screenshot where they can drill  
20 into a customer -- Jim can, at any time, look on  
21 the system and see where the customer is at,  
22 where his threshold is set and what he -- what  
23 he's purchased in the past.  
24 Q. Understanding that, are there

Page 132

1 reports that are generated monthly, though, like  
2 these other reports we've discussed?  
3 MR. CLARK: Objection to  
4 form.  
5 A. I don't know about monthly, but on  
6 demand.  
7 Q. Okay. So you can get realtime  
8 where a customer is in relation to the  
9 thresholds?  
10 A. Yes.  
11 Q. Okay. But you don't run those as  
12 a matter of course?  
13 MR. CLARK: Objection to  
14 form.  
15 Q. Just when asked?  
16 MR. CLARK: Same objection.  
17 A. Right. Yes.  
18 Q. And then "suspicious order  
19 monitoring," I think we've covered those  
20 reports, right?  
21 MR. CLARK: Same objection.  
22 Q. Are there any other reports that  
23 we haven't talked about here today?  
24 MR. CLARK: Same objection.

Page 133

1 A. I guess I want to say that I can  
2 remember. There's a lot of reports. We run a  
3 lot of reports.  
4 Q. Right, but regarding the --  
5 A. Relative to this, I'll say yes.  
6 Q. Regarding specifically suspicious  
7 order monitoring, can you think of any other  
8 reports that we haven't discussed?  
9 A. Not right now, I can't remember if  
10 there are.  
11 Q. Maybe the better question is, the  
12 one report that you have, you said you can run  
13 it by store based on the drug equivalency, and  
14 then we have the customer. Are there any other  
15 views that you can look at for that report --  
16 MR. CLARK: Objection to  
17 form.  
18 Q. -- other than by store and by  
19 customer?  
20 MR. CLARK: Same objection.  
21 A. I can run a report on any field.  
22 I can query any field that I need to. Are there  
23 ones that generally -- I guess the question  
24 you're asking me is, other than customer or

Page 134

1 by -- I mean, I can run it by route. I can run  
 2 it by phone number. I can run it by Zip Code,  
 3 you know, if I need to.  
 4 Q. Yeah, I think the better question  
 5 would have been, what fields are available to  
 6 you?  
 7 A. Okay.  
 8 Q. Which are route, phone number, Zip  
 9 Code. Any others?  
 10 A. Any field in our customer master,  
 11 which any -- any field that's relative to a  
 12 customer that we have in our database, I can run  
 13 a report by.  
 14 Q. And then you can break out the  
 15 drug families?  
 16 A. Sure, sure.  
 17 Q. All right. On the second page of  
 18 that document, first full paragraph, it says,  
 19 "IT Manager shall compile reports monthly  
 20 regarding purchases of controlled substances,  
 21 threshold guidelines and suspicious order  
 22 monitoring. Reports are to automatically be  
 23 forwarded to relevant agencies and DEA as  
 24 appropriate. Copies are to be given to DR/DR

Page 135

1 supervisor with all concerns discussed."  
 2 My understanding from spending  
 3 time with you here today is you talked to me  
 4 about the suspicious order monitoring reports  
 5 that you gave the DEA at the end of the month,  
 6 and then you talked to me about the way that you  
 7 gave it to the DR supervisor, right, which would  
 8 be a different view, correct --  
 9 MR. CLARK: Objection to  
 10 form.  
 11 Q. -- based on customer?  
 12 MR. CLARK: Same objection.  
 13 A. Yes.  
 14 Q. All right. And then after -- and  
 15 then -- go ahead.  
 16 A. After when? I mean, are you  
 17 giving me a specific time frame or what? Can  
 18 you rephrase your question?  
 19 Q. Sure. I think that's -- unless I  
 20 misunderstood you, that's the way you did it  
 21 from 1997 to 2013.  
 22 MR. CLARK: Objection to  
 23 form.  
 24 Q. You would give the DEA those

Page 136

1 reports that we looked at?  
 2 A. Right.  
 3 Q. And then you would do the similar  
 4 report, but with a customer view, to your  
 5 supervisor?  
 6 A. Yes.  
 7 MR. CLARK: Objection to  
 8 form.  
 9 A. Yes. Yes, sir.  
 10 Q. But I think your point is a good  
 11 one. After 2013, when you stopped reporting to  
 12 the DEA, which I understand, you've -- we've  
 13 talked about that. Did you still give those  
 14 reports reviewing the customers and family drugs  
 15 to your supervisor --  
 16 MR. CLARK: Objection to  
 17 form.  
 18 Q. -- or did that stop?  
 19 A. I have ran them, okay, after the  
 20 fact. We didn't hand them off to the DEA. Not  
 21 every month, but I have ran them. Our threshold  
 22 system also will generate a log file that we  
 23 monitor and look at.  
 24 Q. I'm so glad you brought that up.

Page 137

1 I totally forgot about that.  
 2 What does a log file show?  
 3 MR. CLARK: Objection to  
 4 form.  
 5 A. Okay. We have a log file, and as  
 6 part of our threshold system that any time --  
 7 any time a customer reaches a maximum order  
 8 quantity, which means a threshold that's been  
 9 set, it will generate a record in the log file.  
 10 Q. You maintain those?  
 11 A. Yes.  
 12 Q. Back to 1997?  
 13 MR. CLARK: Objection to  
 14 form.  
 15 Q. Oh, no, never mind. 2008, right?  
 16 A. Correct, 2008.  
 17 Q. Yes, sir. Because before 2008,  
 18 I'm not oversimplifying it, but Jim would be  
 19 involved or would get notice of orders, but  
 20 there wasn't this stop ship program, correct?  
 21 MR. CLARK: Objection to  
 22 form.  
 23 Q. Forget it. You've explained it.  
 24 I'll withdraw.

<p style="text-align: right;">Page 138</p> <p>1 All right. Sir, I think we're</p> <p>2 done with -- are there any other reports that</p> <p>3 are generated by the threshold system, other</p> <p>4 than the log file that we just discussed?</p> <p>5 MR. CLARK: Objection to</p> <p>6 form.</p> <p>7 A. Reports, no. When you say</p> <p>8 reports --</p> <p>9 Q. No, no. I'm laughing because I</p> <p>10 didn't ask a good question.</p> <p>11 Are there any other triggers</p> <p>12 and/or documents that are -- and/or e-mails that</p> <p>13 are triggered from the threshold system?</p> <p>14 MR. CLARK: Objection to</p> <p>15 form.</p> <p>16 A. Triggering -- you asked me if we</p> <p>17 trigger e-mails from the threshold system? No,</p> <p>18 we do not.</p> <p>19 Q. Right. Like, let's say I'm Jim</p> <p>20 Schoen and somebody hits their threshold.</p> <p>21 A. Okay.</p> <p>22 Q. Am I going to get notification?</p> <p>23 MR. CLARK: Objection to</p> <p>24 form.</p>	<p style="text-align: right;">Page 140</p> <p>1 So he has to make a decision on</p> <p>2 that order at that time, and either he's calling</p> <p>3 the store or whatever. But then he has to fill</p> <p>4 the order himself.</p> <p>5 Q. Got it.</p> <p>6 A. We're not a big operation, so --</p> <p>7 but we all wear a lot of hats and that's what he</p> <p>8 does. So he's aware of every order that goes</p> <p>9 out of Prescription Supply.</p> <p>10 Q. Got it.</p> <p>11 MR. CLARK: Lance, I know</p> <p>12 you're close to the end. Can we</p> <p>13 get a five-minute restroom break.</p> <p>14 MR. REINS: Yeah, of course.</p> <p>15 THE VIDEOGRAPHER: We're</p> <p>16 going off the record at 11:18.</p> <p>17 (Recess taken.)</p> <p>18 THE VIDEOGRAPHER: We're back</p> <p>19 on the record at 11:27.</p> <p>20 BY MR. REINS:</p> <p>21 Q. We have discussed the log file</p> <p>22 created as part of the threshold system. Would</p> <p>23 that log file information ever be shared with</p> <p>24 the DEA?</p>
<p style="text-align: right;">Page 139</p> <p>1 A. Okay. What would happen then,</p> <p>2 okay, to the best of my ability --</p> <p>3 Q. Yes, sir.</p> <p>4 A. -- is that he will -- okay. Every</p> <p>5 order that hits our system -- and if it would go</p> <p>6 to a threshold, that order stops. Okay?</p> <p>7 Q. I understood that.</p> <p>8 A. He has to review at that time. He</p> <p>9 would look at that order and warrant its merit.</p> <p>10 He may call the customer, try to verify, "Hey,</p> <p>11 what's going on?" And the customer could tell</p> <p>12 him what his reasons were or he may request</p> <p>13 additional documentation or something along that</p> <p>14 line.</p> <p>15 Q. I get what you're saying. My</p> <p>16 question is, how does he know about it? Is it</p> <p>17 an e-mail or is it like a notification?</p> <p>18 A. As he -- okay. Jim also fills the</p> <p>19 orders that come through our system. So he --</p> <p>20 so as the order hits, he's constantly reviewing</p> <p>21 his screen for any in-bound orders that --</p> <p>22 they're held. He has to -- he has to either key</p> <p>23 a narcotic blank number in on it, or he has to</p> <p>24 actually oversee that order.</p>	<p style="text-align: right;">Page 141</p> <p>1 A. It could be.</p> <p>2 Q. Was it sent periodically?</p> <p>3 A. No, it was not.</p> <p>4 Q. Would the log file show when a</p> <p>5 customer hit a threshold? Correct?</p> <p>6 MR. CLARK: Objection to</p> <p>7 form.</p> <p>8 A. The log file would show any time a</p> <p>9 customer tried to order beyond his threshold.</p> <p>10 Now, any order that was above threshold would go</p> <p>11 for review at that time. So if the order came</p> <p>12 in electronically via an Internet source or</p> <p>13 whatever, at that time that order stopped, I</p> <p>14 mean, on that process, and that order would be</p> <p>15 reviewed.</p> <p>16 At that time, you know, and it's</p> <p>17 only a matter if they hit the thresholds. I</p> <p>18 know that Jim and Tom, when they were</p> <p>19 determining thresholds, tried to be on the -- I</p> <p>20 think the reserve side on some of the</p> <p>21 thresholds. When they tried to figure out these</p> <p>22 maximum order quantities, I believe they tried</p> <p>23 to not ship -- I mean, they actually reduced</p> <p>24 those quantities quite a bit from what other</p>

<p style="text-align: right;">Page 142</p> <p>1 peers were using.</p> <p>2 MR. REINS: I'm going to move</p> <p>3 to strike as nonresponsive.</p> <p>4 Q. My question to you is, would the</p> <p>5 log files show when a customer, I guess,</p> <p>6 attempts to order beyond their threshold?</p> <p>7 MR. CLARK: Objection to</p> <p>8 form.</p> <p>9 A. Yes.</p> <p>10 Q. You were not part of the</p> <p>11 conversations with Jim and Tom when they set</p> <p>12 thresholds, were you?</p> <p>13 MR. CLARK: Objection to</p> <p>14 form.</p> <p>15 A. Outside of just running the</p> <p>16 reports.</p> <p>17 Q. Right.</p> <p>18 A. That's the only part -- way I was.</p> <p>19 Q. Right. How they did it,</p> <p>20 specifically the criteria they used, all of the</p> <p>21 methodology that went into it, they would be the</p> <p>22 best ones to ask, right?</p> <p>23 A. Yes.</p> <p>24 Q. Now, if somebody tried to order</p>	<p style="text-align: right;">Page 144</p> <p>1 but if he says no, it's a loser,</p> <p>2 so ...</p> <p>3 A. This is -- yes, but there's other</p> <p>4 fields here that are not in the log file.</p> <p>5 Q. All right. What is the number on</p> <p>6 the bottom right?</p> <p>7 A. There is no number on the bottom</p> <p>8 right.</p> <p>9 Q. There's no PSI?</p> <p>10 A. No.</p> <p>11 Q. Okay.</p> <p>12 A. So that --</p> <p>13 Q. What fields are missing?</p> <p>14 MR. REINS: I'll attach it.</p> <p>15 We'll make it Plaintiffs' Exhibit</p> <p>16 Number 5 [sic].</p> <p>17 A. What fields are missing? No. I</p> <p>18 think there's more fields here than are in the</p> <p>19 log file.</p> <p>20 Q. Okay. But it looks generally like</p> <p>21 that?</p> <p>22 MR. CLARK: Objection to</p> <p>23 form.</p> <p>24 A. This -- this spreadsheet was used</p>
<p style="text-align: right;">Page 143</p> <p>1 beyond their threshold, could Jim raise the</p> <p>2 threshold?</p> <p>3 A. Yes, he could.</p> <p>4 Q. And did --</p> <p>5 MR. CLARK: Objection to</p> <p>6 form.</p> <p>7 Q. -- if you know.</p> <p>8 A. I could tell from that record</p> <p>9 where his threshold was and where -- if the</p> <p>10 threshold was raised at that point. It keeps</p> <p>11 track of what he's set at, and I can keep track</p> <p>12 of where he's at. That's one of the things that</p> <p>13 it logs.</p> <p>14 Q. Does it look like this</p> <p>15 (indicating)?</p> <p>16 MR. CLARK: Objection to</p> <p>17 form.</p> <p>18 MR. REINS: I'm going to</p> <p>19 identify -- I'll do all that if</p> <p>20 this gets me anywhere.</p> <p>21 MR. CLARK: Objection to</p> <p>22 form. Be specific about what the</p> <p>23 "it" is.</p> <p>24 MR. REINS: I know. I know,</p>	<p style="text-align: right;">Page 145</p> <p>1 using the log file, but it doesn't have all the</p> <p>2 data the log file -- this spreadsheet has more</p> <p>3 data in it besides what's on the log file, okay?</p> <p>4 For example, we may have a</p> <p>5 customer number in the file. We don't have the</p> <p>6 customer name. That would be retrieved from the</p> <p>7 customer master file. So -- and I think this</p> <p>8 was just a recap of the file to show that we</p> <p>9 were logging these since 2008 when we started.</p> <p>10 Q. That's when it started, right?</p> <p>11 A. Yeah.</p> <p>12 MR. REINS: We'll make it</p> <p>13 Exhibit 5 [sic].</p> <p>14 ---</p> <p>15 (PSI - K. Harbauer Exhibit 6 marked.)</p> <p>16 ---</p> <p>17 BY MR. REINS:</p> <p>18 Q. You said you could give it to the</p> <p>19 DEA, but you did not periodically give it to the</p> <p>20 DEA, correct?</p> <p>21 MR. CLARK: Objection to</p> <p>22 form.</p> <p>23 Q. The log file.</p> <p>24 MR. CLARK: Same objection.</p>

<p style="text-align: right;">Page 146</p> <p>1 A. I think what Jim would do, it 2 would instigate a call, he would review that 3 order. Because just because it's on the log 4 file doesn't necessarily mean it's a suspicious 5 order. 6 Q. Right. Well, after 2013, you 7 weren't using your old system anymore, 8 suspicious ordering, so this threshold system 9 became your new system apparently, right? 10 MR. CLARK: Objection to 11 form. 12 A. Yes. 13 Q. So under the new system, the 14 suspicious -- I mean, you're still required to 15 do suspicious order monitoring, correct? 16 A. And I can tell that you we are 17 doing that. 18 Q. Using the threshold system? 19 A. Yes. 20 Q. But you're not using the old 21 system of pharmacies ordering more than the 22 averages anymore, are you? 23 A. No. 24 MR. CLARK: Objection to</p>	<p style="text-align: right;">Page 148</p> <p>1 data in that -- in there would have to be 2 compared to sales history to see if that order 3 ever really was shipped. It doesn't show that 4 in the log file. 5 Q. Do you understand, sitting here 6 today, that suspicious order is really regarding 7 the order, not the shipment? 8 MR. CLARK: Objection to 9 form. 10 Q. It's the order that's the focus, 11 right? 12 MR. CLARK: Objection to 13 form. 14 Q. Someone trying to order 15 medications beyond their threshold or beyond the 16 averages, which is unusual or increased 17 frequency and/or quantity? 18 A. Yes, I -- 19 MR. CLARK: Objection to 20 form. 21 A. Yes, I understand. 22 Q. So the shipment is not. The key 23 indicator is the DEA has educated your company, 24 it's the order, right?</p>
<p style="text-align: right;">Page 147</p> <p>1 form. 2 Q. You stopped doing that in 2013? 3 A. Correct. Correct. 4 MR. CLARK: Let him finish 5 his question. Give me an 6 opportunity to object. 7 Q. So if I'm hearing you correctly, 8 your system now, if I came in and wanted to 9 audit you and look at the documents to see 10 variances in what is out of the norm or unusual 11 frequency or unusual quantity or all the things 12 that the regulations require, I would need to 13 look at the log file, correct? 14 MR. CLARK: Objection to 15 form. 16 A. That would be part of what you 17 would look at. 18 Q. What else would I look at? 19 A. I think you would use the customer 20 master. You would look at sales history. That 21 log file that contains that is really just any 22 time it hits a threshold, it doesn't mean that 23 that order was sent out or overridden. We would 24 have to compare it to sales record. All the</p>	<p style="text-align: right;">Page 149</p> <p>1 MR. CLARK: Same objection. 2 A. Correct, correct. 3 Q. So you're saying now under the new 4 system post 2013, you would need to look at the 5 log file, the customer master, and the sales 6 history for trends as to that customer's 7 ordering pattern, correct? 8 MR. CLARK: Objection to 9 form. 10 A. No, I didn't -- I didn't say that. 11 I said that if there was a particular entry in 12 the log file, if I could tell that -- I would 13 have to go out and look at sales history for 14 that day, for that customer, for that item to 15 see if he ever shipped that order. Those 16 orders -- most of those orders are blocked. You 17 know, they were -- you know, they're blocked. 18 And then whether or not he 19 overrode -- you asked me about him overriding 20 the limits. You know, he may have a reason. 21 That order may sit out there on the system and 22 there may be redundant entries there until -- if 23 Jim was waiting on, for example -- say he was 24 waiting on paperwork from the customer before he</p>



<p style="text-align: right;">Page 150</p> <p>1 would ship it. Maybe it wasn't a suspicious  2 order at that time. Just because he hit that  3 maximum, I don't think that determines that  4 makes it a suspicious order.  5 But that's not my determination to  6 make, but I don't believe that -- that wouldn't  7 have called it the DEA -- he wouldn't have  8 called DEA right away just because he over -- he  9 hit one of his maximums. Because I believe he  10 used -- Jim used that as a tool, as one of his  11 tools, to determine whether or not this guy  12 was -- an order was suspicious, the order coming  13 through was suspicious.  14 Q. If we wanted to know whether that  15 order -- an order over their threshold was  16 actually shipped --  17 A. Yes.  18 Q. -- what would we need to look at?  19 MR. CLARK: Objection the to  20 form.  21 A. We would look at the sales  22 history.  23 Q. What does the customer master  24 show?</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. Correct me if I am wrong, but it  2 sounds like post 2013, the duty of reporting to  3 the DEA suspicious order monitoring requirements  4 kind of shifted from you and the way you guys  5 did it to really more Jim?  6 MR. CLARK: Objection to  7 form.  8 A. More of a -- yeah, before the  9 order happens, before the order was ever shipped  10 as opposed to after. Did it shift to Jim? I  11 would think so, yes, on that. He's always had  12 that responsibility.  13 Q. Right. But you were doing  14 periodic reports before 2013 and then it shifted  15 from no more periodic reporting to a  16 case-by-case basis is what the company did,  17 right?  18 MR. CLARK: Objection to  19 form.  20 A. Yes.  21 Q. If I wanted to know what orders  22 were not shipped based on their suspicious  23 nature, what would show that?  24 MR. CLARK: Objection to</p>
<p style="text-align: right;">Page 151</p> <p>1 A. Customer master would show all the  2 relevant things about that particular store, DEA  3 number, customer, address.  4 Q. History of purchases?  5 MR. CLARK: Were you done  6 answering?  7 A. That -- that's fine. I'm done  8 answering, yeah.  9 Q. History of purchases?  10 MR. CLARK: Objection to  11 form.  12 A. Not on a detail level. Sales  13 history would have that information.  14 Q. And whether Jim overrode the  15 initial threshold, what would show that?  16 A. We could tell from the log file  17 and the -- well, a combination of the log file  18 and the sales history. So if there was an  19 entry, then he could see where that order was  20 shipped.  21 Q. Perfect. It sounds like --  22 correct me if I'm wrong, Kirk. I hope you don't  23 mind me calling you Kirk.  24 A. That's my name, Kirk.</p>	<p style="text-align: right;">Page 153</p> <p>1 form.  2 A. The same two files, the log file  3 and the sales history system.  4 Q. So if we have those, we can see  5 what was shipped, whether it was shipped,  6 whether it was overridden, the threshold, we can  7 see what -- how it was handled?  8 A. Yes.  9 MR. CLARK: Same objection.  10 Q. Do you still have the capability  11 of running these reports that we looked at  12 earlier with the averages for each of these  13 stores 2013 forward -- do you still have the  14 capability of running those reports?  15 MR. CLARK: Objection to  16 form.  17 A. Yes.  18 Q. If I -- okay. Are you able to  19 tell me pre-2013 whether the reports that you  20 were running at that time, that we went over  21 today -- are you with me, the averages and the  22 items sold and all that; remember?  23 MR. CLARK: Objection to  24 form.</p>

<p style="text-align: right;">Page 154</p> <p>1 A. The suspicious order variance</p> <p>2 reports --</p> <p>3 Q. Yes, sir.</p> <p>4 A. -- that we went through?</p> <p>5 Q. Yes, sir.</p> <p>6 A. Okay. The ones that we modified</p> <p>7 after with Janice Margreta?</p> <p>8 Q. Yes, sir. Exactly.</p> <p>9 A. Okay.</p> <p>10 Q. So those reports, can we tell</p> <p>11 what, if any of those -- well, no, we know.</p> <p>12 Never mind.</p> <p>13 Can we tell from 1997 through</p> <p>14 2013, if we wanted to see any shipments that</p> <p>15 were stopped for a suspicious nature, would the</p> <p>16 sales history report show that?</p> <p>17 MR. CLARK: Objection to</p> <p>18 form.</p> <p>19 A. Not if it was stopped. It would</p> <p>20 not generate records in sales history.</p> <p>21 Q. Back then?</p> <p>22 A. Quantities would be zero shipped,</p> <p>23 okay?</p> <p>24 Q. And there wasn't a log before</p>	<p style="text-align: right;">Page 156</p> <p>1 PSI starting with number 274</p> <p>2 through 297. So is this kind of like what we</p> <p>3 looked at earlier, the Online Solutions, kind of</p> <p>4 their guide, so to speak, of how the system is</p> <p>5 going to work?</p> <p>6 MR. CLARK: Objection; form.</p> <p>7 A. Correct. This is a guideline for</p> <p>8 me to -- yeah, how the system is going to work.</p> <p>9 We're designing the system at this point.</p> <p>10 Q. Okay. Now, there's some</p> <p>11 handwriting on the first page there. Is that</p> <p>12 your handwriting?</p> <p>13 A. Yes, it is.</p> <p>14 Q. What does it say?</p> <p>15 A. Where it's crossed off or "product</p> <p>16 mix"?</p> <p>17 Q. "Product mix."</p> <p>18 A. Okay. "Product mix, class versus</p> <p>19 non-class purchases."</p> <p>20 Q. What does that mean?</p> <p>21 A. This system will allow -- you can</p> <p>22 look at dollar amounts of products missed,</p> <p>23 whether a customer is buying -- is he buying</p> <p>24 other things besides just controls. Is he just</p>
<p style="text-align: right;">Page 155</p> <p>1 then, correct, before 2008?</p> <p>2 MR. CLARK: Objection to</p> <p>3 form.</p> <p>4 A. Correct.</p> <p>5 Q. All right. I have a document I</p> <p>6 want to talk to you about because you're</p> <p>7 probably the person to explain it, hopefully.</p> <p>8 ---</p> <p>9 (PSI - K. Harbauer Exhibit 7 marked.)</p> <p>10 ---</p> <p>11 BY MR. REINS:</p> <p>12 Q. So this is going to be -- we'll</p> <p>13 mark it as Plaintiffs' Exhibit Number 6 [sic].</p> <p>14 Does it look familiar to you?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. Tell me what we're looking</p> <p>17 at here.</p> <p>18 A. This is basically our threshold</p> <p>19 system. It's a maximum order quantity system by</p> <p>20 Online Solutions.</p> <p>21 Q. Okay. PSI --</p> <p>22 A. Documentation for the software.</p> <p>23 Sorry.</p> <p>24 Q. No, don't be.</p>	<p style="text-align: right;">Page 157</p> <p>1 coming in to buy controls, and has the ability</p> <p>2 to enforce that by dollar amount. So you can</p> <p>3 look at the mix. Jim has an ability to bring</p> <p>4 that up on a screen and he can see the product</p> <p>5 mix --</p> <p>6 Q. Okay.</p> <p>7 A. -- for a customer.</p> <p>8 Q. Is that what we talked about</p> <p>9 earlier?</p> <p>10 MR. CLARK: Objection to</p> <p>11 form.</p> <p>12 Q. The different class of drugs for</p> <p>13 each customer?</p> <p>14 MR. CLARK: Same objection.</p> <p>15 A. We talked about a lot --</p> <p>16 Q. I know, I know. I think you</p> <p>17 explained it. That's fine.</p> <p>18 So if we go to the next page</p> <p>19 there, "Maximum" -- it's on the bottom. "Maximum</p> <p>20 Units per Month for Customer Data -- Customers</p> <p>21 Data. The Maximum Units per Month File would</p> <p>22 consist of the following fields." One,</p> <p>23 "Medication family;" two, "Customer No.: If</p> <p>24 zero, all customers.</p>

Page 158

1 "Minimum Sales Dollars per Month  
2 for this Level; normally zero if customer number  
3 is not zero.  
4 "Maximum Units per Month for  
5 greater than the Minimum Sales Dollars but less  
6 than the first larger Minimum Sales Dollars per  
7 Month for this Medication Family and Customer  
8 Number.  
9 "New Customer Flag, which  
10 identifies this record to be used for a Customer  
11 that has no sales in prior months. Only one per  
12 customer number and Medication Family."  
13 Is that how yours is structured?  
14 A. Yes.  
15 Q. And what is that document called?  
16 Is that --  
17 MR. CLARK: Objection to  
18 form.  
19 A. The document here in -- what is  
20 this document?  
21 Q. No. What do you call it  
22 internally, this -- what shows this information?  
23 Is this the log?  
24 A. No. This is just a maximum units

Page 159

1 per month file. It's a data file that  
2 contains -- basically what it's summarizing [sic],  
3 there's a way to set up a record in the file  
4 that -- say it's hydrocodone and that's a drug  
5 family. So we could have that -- that drug  
6 family's hydrocodones. And we could have a zero  
7 out there, which is saying right here zero if  
8 it's all customers, which would be a default  
9 amount.  
10 And then each individual customer,  
11 you could put a customer number record in there  
12 with that drug family name, and you could set  
13 individually those thresholds. You could move  
14 them up or down, wherever you want to, is what  
15 it's saying.  
16 Q. Okay. How are you -- and I guess  
17 I should ask this. How were your thresholds  
18 set?  
19 MR. CLARK: Objection to  
20 form.  
21 A. How were they set?  
22 Q. Like what was the threshold, the  
23 number of what?  
24 MR. CLARK: Objection; form.

Page 160

1 A. It's a number of pills, basically.  
2 Q. Okay.  
3 A. Pills or it could be liquid form  
4 too.  
5 Q. And how would this, what we just  
6 went through, play into that, if at all --  
7 MR. CLARK: Objection; form.  
8 Q. -- in your system?  
9 MR. CLARK: Same objection.  
10 A. What this is is basically on the  
11 customer's side what -- basically it's a -- it's  
12 a setting for a per customer basis. So there  
13 would be an entry for -- either it would default  
14 or it would go to an individual customer where  
15 he could have a -- set a minimum or a maximum  
16 quantity, I mean. Not a minimum.  
17 Q. But the overview, when we look at  
18 the first page, first paragraph, it says -- the  
19 overview, it says, "The wholesaler determines  
20 the amount of certain medication families for a  
21 month and stops shipments of items in that  
22 medication family to a customer that makes the  
23 amount exceed the maximum."  
24 This is the threshold system you

Page 161

1 spoke to me about, correct?  
2 A. Correct.  
3 Q. And there's a line through the  
4 first sentence that says, "The DEA is requiring  
5 wholesalers to limit the sales of certain  
6 medication families to customers."  
7 Did you draw a line through that?  
8 A. Yes, I did.  
9 Q. Why?  
10 A. When we reviewed this with the  
11 DEA, and we went through it with the agent,  
12 she -- she said we are not -- this is not our  
13 requirement. And at that time I drew a line  
14 through it. That was in the documentation for  
15 this. This is what I got from Online Solutions.  
16 And they didn't want to go on record stating  
17 that they're requiring us to limit the sale of  
18 certain medication families to customers.  
19 Q. Okay.  
20 A. So I drew a line through that.  
21 Q. So is this -- when you start  
22 getting into the PSI-277, there's a chart up  
23 there. It says, "Here's an example of the  
24 maximum units per month file."

<p style="text-align: right;">Page 162</p> <p>1 Is that how you guys do it?</p> <p>2 A. "Here's an example of the maximum</p> <p>3 units per month file." Okay.</p> <p>4 Q. You guys don't use dollars, it</p> <p>5 doesn't look like?</p> <p>6 A. No, we're not -- we're not based</p> <p>7 by dollars at all. We don't --</p> <p>8 Q. You're based on pills?</p> <p>9 A. We make sure -- we're looking at</p> <p>10 the quantities they're buying. We're not really</p> <p>11 relevant -- dollars aren't a big factor.</p> <p>12 Outside that, you know, is this guy just coming</p> <p>13 in to buy controls and -- and that would tip a</p> <p>14 flag off right there, and we probably</p> <p>15 wouldn't -- we would not sell to them.</p> <p>16 Q. It sounds like there's a lot of</p> <p>17 effort, from speaking with you, into setting the</p> <p>18 threshold. I mean, that's not something done</p> <p>19 willy-nilly, right? There's a lot of --</p> <p>20 A. Absolutely.</p> <p>21 MR. CLARK: Objection to</p> <p>22 form.</p> <p>23 Q. You said "absolutely." What do</p> <p>24 you mean?</p>	<p style="text-align: right;">Page 164</p> <p>1 they put in an order for 3,000, what would</p> <p>2 happen?</p> <p>3 A. It would stop the order, and it</p> <p>4 would generate a record in the log file.</p> <p>5 Q. All right. If you can go to 280.</p> <p>6 Maximum Monthly Quantity Prescription Supply.</p> <p>7 What are we looking at here?</p> <p>8 MR. CLARK: Objection to</p> <p>9 form.</p> <p>10 A. Okay. This is an e-mail from -- I</p> <p>11 believe this came directly from Don Magdantz</p> <p>12 from Online Solutions --</p> <p>13 Q. Okay.</p> <p>14 A. -- to me in regards to the</p> <p>15 modifications we needed to make to our system,</p> <p>16 which is Online Solutions, and discussed what</p> <p>17 work would be done by them and us. And this is</p> <p>18 basically the things that we needed to add to</p> <p>19 our system to implement their system, the fields</p> <p>20 we needed to add.</p> <p>21 For example, on the customer</p> <p>22 master file, there's a flag out there, the</p> <p>23 CINFO, which is a one character field that would</p> <p>24 be added to the customer master. And then</p>
<p style="text-align: right;">Page 163</p> <p>1 A. I believe there is, yeah, a lot of</p> <p>2 thought goes into it.</p> <p>3 Q. All right. On the next page</p> <p>4 there, 278. It kind of talks about, there in</p> <p>5 the middle, it says, "For the above example, the</p> <p>6 units shipped is 1,100."</p> <p>7 When you look at this page and</p> <p>8 it's doing the mathematical equations, but is it</p> <p>9 basically saying, "Hey, once you hit your -- if</p> <p>10 you have 10,000 and you're at 8,000, well then</p> <p>11 your threshold limit is 2,000," right? I mean,</p> <p>12 is that essentially what we're doing here with</p> <p>13 the math?</p> <p>14 MR. CLARK: Objection to</p> <p>15 form.</p> <p>16 A. If they're set at 10,000 pills and</p> <p>17 they have 8,000 -- currently already purchased</p> <p>18 8,000 pills at that time. So they really are --</p> <p>19 only can buy 2,000 pills more.</p> <p>20 Q. That's right.</p> <p>21 A. So if they put an order in for</p> <p>22 greater than that amount, it definitely would</p> <p>23 stop the order right there and then.</p> <p>24 Q. Let me ask you a question. If</p>	<p style="text-align: right;">Page 165</p> <p>1 medication families, that's the new -- there's a</p> <p>2 new file there. So this entire one is the</p> <p>3 medication family file that you -- that we</p> <p>4 discussed earlier on the one page.</p> <p>5 The maximum -- there's a new file</p> <p>6 out there, that's the log file -- or the log</p> <p>7 file is down below. FM maximum monitor is</p> <p>8 another file out there. It has to do with</p> <p>9 dollars. But that's what these are. And this</p> <p>10 last, this is a log file.</p> <p>11 So FGMMXLOG is the file, the new</p> <p>12 file. That's the log file. This is what's in</p> <p>13 the log file, and it continues on to the next</p> <p>14 page.</p> <p>15 Q. Okay. This is everything that's</p> <p>16 in the log file?</p> <p>17 A. Yeah. Those are all the</p> <p>18 information or the fields or price buckets or --</p> <p>19 you'd say, or different things that -- it just</p> <p>20 tells where they are located in the file.</p> <p>21 And then after that, order</p> <p>22 processing system, these are modifications to</p> <p>23 our order entry system. OP170W is our CRT order</p> <p>24 entry. That's our telemarketers and anybody</p>

<p style="text-align: right;">Page 166</p> <p>1 that we would hand key an order in that they          2 take on the phone, for example. And these are          3 the modifications that would be in here.          4 Relatively the main -- the          5 important thing on this one is, if they try to          6 buy a quantity, they'll get a message that says,          7 "Quantity order exceeds maximum quantity per          8 month." It displays it and stops the order and          9 changes a shipped code to an M. And that's just          10 in order processing.          11 And then I don't know how far you          12 want to go through this.          13 Q. No, I don't.          14 A. Because this other -- oh, okay.          15 Anyway.          16 Q. Yeah, I mean, just generally, I          17 mean, it's just --          18 A. These are the screenshots of the          19 software, yeah.          20 MR. CLARK: Let him ask a          21 question.          22 Q. The -- yeah, I mean, let's finish          23 it up, because, you know, it may be a little          24 over my head, but other people -- so the</p>	<p style="text-align: right;">Page 168</p> <p>1 to talk about the document behind it in a          2 minute, but before we do that, I want to shift          3 because I want to make sure I have an          4 understanding, because I get one shot with you.          5 After 2013 -- I know what you did          6 before that. But after 2013, there was no --          7 you were not involved in the periodic reporting          8 of suspicious orders. We've covered that,          9 correct?          10 MR. CLARK: Objection to          11 form.          12 Q. Meaning the monthly reports which          13 you had been doing previously, right?          14 MR. CLARK: Same objection.          15 A. I did not produce the same reports          16 I did prior to 2013, yes.          17 Q. And if I understood you right, you          18 did not produce -- there was no periodic          19 reporting, meaning you did not submit a          20 different kind of report every month, correct?          21 A. To the DEA?          22 Q. Correct.          23 MR. CLARK: Same objection.          24 Go ahead.</p>
<p style="text-align: right;">Page 167</p> <p>1 screenshots, what page are you on? I'm sorry?          2 A. This is 282.          3 Q. Yes, sir. Okay. And what are          4 those screenshots showing?          5 A. These are just basically what a          6 screen would look like in -- this is kind of          7 pseudocode, basically, for a programmer, I guess          8 I would say, where a numeric field, it looks          9 like it's a 6666, you can see that's a numeric          10 field. O -- anything that says like "shipped to          11 customer," well, that's a numeric field. The          12 customer number would be there.          13 And then after that all the O,          14 that's an output field. It's probably read from          15 the customer master. So that would be the          16 customer's name. And it's basically a way for          17 him to convey to me what these screens look          18 like.          19 Q. That's exactly what I thought.          20 A. Okay. This is what I do. And I          21 love talking about it. And I'll be happy to          22 talk about that.          23 Q. No, that's okay.          24 Let me kind of shift. I do want</p>	<p style="text-align: right;">Page 169</p> <p>1 A. To the DEA?          2 Q. Yes, sir.          3 A. No, I did not.          4 Q. Okay. Now, do you know if any          5 suspicious report monitoring or any variance          6 reports or things of that nature were submitted          7 after 2013?          8 MR. CLARK: Objection to          9 form.          10 Q. Do you know?          11 MR. CLARK: Same objection.          12 A. I guess the similar of that          13 nature, reports maybe not from me, but I know          14 that -- well, I know that I -- I have recapped          15 sales on certain customers if they would e-mail          16 me or in regards to that. Would you call that a          17 suspicious order monitoring report? Usually          18 there's -- you know, the DEA, they're doing an          19 audit or something or an agent there wants to          20 know what this guy's purchases are, so I would          21 submit those, but ...          22 Q. That would be at the request of          23 the DEA?          24 A. At the request of the DEA.</p>



<p style="text-align: right;">Page 170</p> <p>1 Q. Yes, sir.</p> <p>2 A. As far as you say or other, I know</p> <p>3 that if there was an issue, Jim would have</p> <p>4 picked up the phone -- and he was probably on</p> <p>5 that first basis. He would pick up the phone</p> <p>6 and talk to the DEA agent himself.</p> <p>7 Q. So I want to stick with you --</p> <p>8 A. Okay.</p> <p>9 Q. -- because I don't want --</p> <p>10 A. I can only answer for me. That's</p> <p>11 true.</p> <p>12 Q. That's my point, and I'm not --</p> <p>13 I'm not saying your wrong, but I only want you</p> <p>14 to answer for you.</p> <p>15 So after 2013, after the reports,</p> <p>16 which we went over in depth before, you did not</p> <p>17 submit anything other than in response to</p> <p>18 queries from the DEA, correct?</p> <p>19 MR. CLARK: Objection to</p> <p>20 form.</p> <p>21 A. Correct.</p> <p>22 Q. Now, what Jim did or didn't do</p> <p>23 from that point forward to now, he'd be the best</p> <p>24 one to ask?</p>	<p style="text-align: right;">Page 172</p> <p>1 MR. CLARK: Objection to</p> <p>2 form.</p> <p>3 A. Well, Candy, my sister, she would</p> <p>4 be in charge with the regulatory, and she's the</p> <p>5 one that sets up these procedures. And we try</p> <p>6 to come up with policies, and, you know, we are</p> <p>7 VAWD accredited. You know, we try to do what</p> <p>8 the DEA is requesting us to do. You know, to</p> <p>9 the best of our abilities, we try to follow the</p> <p>10 law. And that's what she does.</p> <p>11 Now, as far as the policies, if</p> <p>12 she -- you know, I guess the question is what?</p> <p>13 Can you rephrase that? I kind of lost myself</p> <p>14 here on that.</p> <p>15 Q. That's okay. I think what you're</p> <p>16 saying is your sister would be the most</p> <p>17 knowledgeable person about policies?</p> <p>18 A. Right.</p> <p>19 Q. Yep. We've talked about post</p> <p>20 2013, that the sales history, coupled with the</p> <p>21 log, would show when a shipment was stopped due</p> <p>22 to a quote/unquote suspicious nature. We talked</p> <p>23 about that, correct?</p> <p>24 MR. CLARK: Objection to</p>
<p style="text-align: right;">Page 171</p> <p>1 A. Yeah, right. Yes.</p> <p>2 Q. Now, and I don't mean that</p> <p>3 flippantly, I mean, were you -- if you were in</p> <p>4 the room or if he CC'd you on it or if there</p> <p>5 were real -- you had personal knowledge of these</p> <p>6 things, you can tell me, but I'm trying to keep</p> <p>7 you out of things that you think may have</p> <p>8 happened as opposed to you knew they happened.</p> <p>9 MR. CLARK: Objection to</p> <p>10 form.</p> <p>11 Q. Make sense?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. So Jim would be the best</p> <p>14 one to ask?</p> <p>15 A. Yes.</p> <p>16 Q. All right. Did the policy -- did</p> <p>17 anybody ever talk about -- because all the</p> <p>18 policies talk about your duties and</p> <p>19 responsibilities as the IT manager. When there</p> <p>20 was this shift in how you guys did things in</p> <p>21 2008, was there ever any talk about updating or</p> <p>22 revising the policies regarding stopping</p> <p>23 shipments and/or who is now responsible for</p> <p>24 reporting?</p>	<p style="text-align: right;">Page 173</p> <p>1 form.</p> <p>2 Q. If someone reached their</p> <p>3 threshold.</p> <p>4 MR. CLARK: Same objection.</p> <p>5 A. Say that again.</p> <p>6 Q. Sure. I asked you earlier, if I</p> <p>7 wanted to know whether somebody who had reached</p> <p>8 their threshold, whether the order was stopped</p> <p>9 or whether it was shipped, you said the sales</p> <p>10 history, coupled with the log, would show us</p> <p>11 that?</p> <p>12 A. Yes.</p> <p>13 Q. Before 2013, what would you look</p> <p>14 at?</p> <p>15 MR. CLARK: Objection to</p> <p>16 form.</p> <p>17 Q. Same things? Well, not the same</p> <p>18 things.</p> <p>19 A. Sales history.</p> <p>20 Q. Yeah. Which document Number 5</p> <p>21 includes that information, correct?</p> <p>22 MR. CLARK: Objection to</p> <p>23 form.</p> <p>24 A. This is from the log file. That</p>

<p style="text-align: right;">Page 174</p> <p>1 would be after 2008.</p> <p>2 Q. Gotcha. Before that it was</p> <p>3 just --</p> <p>4 A. And I don't know if that is --</p> <p>5 Q. It's a compilation.</p> <p>6 A. Okay. Yeah, that log file that</p> <p>7 you're looking at there, I don't know what that</p> <p>8 is exactly. It's a spreadsheet --</p> <p>9 Q. Right.</p> <p>10 A. -- that I created.</p> <p>11 Q. Exactly right. All right. Moving</p> <p>12 on to 286. So this looks like -- and it's part</p> <p>13 of this package. Do you know why this is in</p> <p>14 here?</p> <p>15 A. No, I do not.</p> <p>16 Q. Okay.</p> <p>17 A. Monthly quantity, that would be</p> <p>18 the end of that.</p> <p>19 Q. Any other system changes in how</p> <p>20 you guys reported how you guys -- strike that.</p> <p>21 Any other systems changes in your</p> <p>22 databases, your computer software, all those</p> <p>23 things we've touched on today, that we haven't</p> <p>24 talked about, specifically regarding suspicious</p>	<p style="text-align: right;">Page 176</p> <p>1 A. Yes.</p> <p>2 MR. REINS: Thank you for</p> <p>3 your time. I don't have any more</p> <p>4 questions.</p> <p>5 THE WITNESS: Thank you, sir.</p> <p>6 MR. CLARK: I have no</p> <p>7 questions.</p> <p>8 THE VIDEOGRAPHER: We're</p> <p>9 going off the record at 12:00 p.m.</p> <p>10 (Recess taken.)</p> <p>11 MR. REINS: Just for</p> <p>12 clarification in the deposition,</p> <p>13 the summary chart that was</p> <p>14 referenced was identified as</p> <p>15 Exhibit Number 5. It's actually</p> <p>16 Exhibit Number 6 when we were</p> <p>17 talking about the log-in and</p> <p>18 similar type information.</p> <p>19 And Exhibit Number 7 is the</p> <p>20 Prescription Supply maximum monthly</p> <p>21 units form, which is Bates numbered</p> <p>22 274 through 297.</p> <p>23 (Signature not waived.)</p> <p>24 - - -</p>
<p style="text-align: right;">Page 175</p> <p>1 order monitoring and/or shipments or stopping</p> <p>2 shipments, things of that nature?</p> <p>3 MR. CLARK: Objection to</p> <p>4 form.</p> <p>5 A. That really covers a lot, what you</p> <p>6 just said, and I guess I am constantly in a</p> <p>7 state of change all the time.</p> <p>8 Q. Sure.</p> <p>9 A. I'm constantly upgrading and</p> <p>10 upgrading. Can I say, the system basically is</p> <p>11 working the way it was there. I haven't -- I</p> <p>12 haven't made any major modifications, that I</p> <p>13 know of. There may be an adjustment to a screen</p> <p>14 or something along that nature, but I would say</p> <p>15 there has been no changes to that. But I'm</p> <p>16 constantly working on programs of all types, as</p> <p>17 far as sales history and all that.</p> <p>18 Q. Understood. But how you track,</p> <p>19 monitor narcotics, report suspicious orders,</p> <p>20 stop shipments, raise thresholds, we've covered</p> <p>21 all of your knowledge base on those issues; fair</p> <p>22 to say?</p> <p>23 MR. CLARK: Objection to</p> <p>24 form.</p>	<p style="text-align: right;">Page 177</p> <p>1 Thereupon, at 12:00 p.m., on Wednesday,</p> <p>2 February 27, 2018, the deposition was concluded.</p> <p>3 - - -</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

Page 178

1 CERTIFICATE  
 2 STATE OF OHIO :  
 SS:  
 3 COUNTY OF \_\_\_\_\_:  
 4  
 5 I, KIRK HARBAUER, do hereby certify that I  
 6 have read the foregoing transcript of my  
 7 cross-examination given on February 27, 2018; that  
 8 together with the correction page attached hereto  
 9 noting changes in form or substance, if any, it is  
 10 true and correct.  
 11 \_\_\_\_\_  
 KIRK HARBAUER  
 12  
 13 I do hereby certify that the foregoing  
 14 transcript of the cross-examination of KIRK HARBAUER  
 15 was submitted to the witness for reading and signing;  
 16 that after he had stated to the undersigned Notary  
 17 Public that he had read and examined his cross-  
 18 examination, he signed the same in my presence on the  
 19 \_\_\_\_\_ day of \_\_\_\_\_, 2019.  
 20  
 21 \_\_\_\_\_  
 NOTARY PUBLIC - STATE OF OHIO  
 22  
 23 My Commission Expires:  
 24 \_\_\_\_\_, \_\_\_\_\_.

Page 179

1 CERTIFICATE  
 2 STATE OF OHIO :  
 SS:  
 3 COUNTY OF FRANKLIN :  
 4 I, Carol A. Kirk, a Registered Merit  
 Reporter and Notary Public in and for the State of  
 5 Ohio, duly commissioned and qualified, do hereby  
 certify that the within-named KIRK HARBAUER was by me  
 6 first duly sworn to testify to the truth, the whole  
 truth, and nothing but the truth in the cause  
 7 aforesaid; that the deposition then given by him was  
 by me reduced to stenotype in the presence of said  
 8 witness; that the foregoing is a true and correct  
 transcript of the deposition so given by him; that the  
 9 deposition was taken at the time and place in the  
 caption specified and was completed without  
 10 adjournment; and that I am in no way related to or  
 employed by any attorney or party hereto or  
 11 financially interested in the action; and I am not,  
 nor is the court reporting firm with which I am  
 12 affiliated, under a contract as defined in Civil Rule  
 28(D).  
 13  
 14 IN WITNESS WHEREOF, I have hereunto set my  
 hand and affixed my seal of office at Columbus, Ohio  
 on this 4th day of March 2019.  
 15  
 16  
 17  
 18 \_\_\_\_\_  
 CAROL A. KIRK, RMR  
 NOTARY PUBLIC - STATE OF OHIO  
 19 My Commission Expires: April 9, 2022.  
 20 ---  
 21  
 22  
 23  
 24

Page 180

1 DEPOSITION ERRATA SHEET  
 2 I, KIRK HARBAUER, have read the transcript  
 of my deposition taken on the 27th day of February  
 3 2019, or the same has been read to me. I request that  
 the following changes be entered upon the record for  
 4 the reasons so indicated. I have signed the signature  
 page and authorize you to attach the same to the  
 5 original transcript.  
 6 Page Line Correction or Change and Reason:  
 7 \_\_\_\_\_  
 8 \_\_\_\_\_  
 9 \_\_\_\_\_  
 10 \_\_\_\_\_  
 11 \_\_\_\_\_  
 12 \_\_\_\_\_  
 13 \_\_\_\_\_  
 14 \_\_\_\_\_  
 15 \_\_\_\_\_  
 16 \_\_\_\_\_  
 17 \_\_\_\_\_  
 18 \_\_\_\_\_  
 19 \_\_\_\_\_  
 20 \_\_\_\_\_  
 21 \_\_\_\_\_  
 22 \_\_\_\_\_  
 23 \_\_\_\_\_  
 24 Date \_\_\_\_\_ Signature \_\_\_\_\_